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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 168

INTERNATIONAL UNION, UNITED MINE WORKERS OF AMERICA, AND JOHN L. LEWIS, AS PRESIDENT, INTERNATIONAL UNION, UNITED MINE WORKERS OF AMERICA,
Petitioners,

vs.

THE UNITED STATES OF AMERICA

No. 169

INTERNATIONAL UNION, UNITED MINE WORKERS OF AMERICA, AND JOHN L. LEWIS, AS PRESIDENT, INTERNATIONAL UNION, UNITED MINE WORKERS OF AMERICA, AND AS UNION REPRESENTATIVE TRUSTEE, BOARD OF TRUSTEES, UNITED MINE WORKERS OF AMERICA WELFARE AND RETIREMENT FUND,
Petitioners,

vs.

THE UNITED STATES OF AMERICA

PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT AND BRIEF IN SUPPORT THEREOF

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INDEX

Subject Index

	Page
Petition for Writs of Certiorari to the United States Court of Appeals for the District of Columbia Circuit	1
Opinion Below	2
Jurisdiction	3
Summary and Statement of the Matters Involved	3
A. The Matters Involved in the Contempt Proceedings (Case No. 9943)	5
The Complaint	5
The Temporary Restraining Order	6
Motion to Dissolve and Vacate Restraining Order	7
Petition for Rule to Show Cause	8
Answer and Return to Rule: Defenses and Rulings Thereon	8
Defenses 1	8
Defenses 2	11
Narration of Facts	14
a. On the issue of the existence of a strike and the responsibility of Union and Lewis therefor	14
b. On the issue whether the alleged strike if permitted to continue for the period provided in Sections 206-210, would imperil the national health or safety	19
c. On the issues whether Union and Lewis had "knowingly, wilfully, wrongfully and deliberately disobeyed and violated" the restraining order and the penalties imposed on Union and Lewis	22
Defenses 3, 4 and 5	28

Page

B. Matters Involved in Case No. 9944 29
Questions Presented 32
Reasons Relied on for the Allowance of the Writs ... 38
Prayer 41
Motion to Dispense With Printing of Certain Exhibits 43

Brief in Support of Petition for Writs of Certiorari: 45
A. Opinion of the Court Below 46
B. Jurisdiction 46
C. Statement of the Case 46
D. Specifications of Errors 47
E. Argument 51
I. (a) The contempt proceedings involved the meaning of the 1947 Agreement, the right to strike and the so-called Taft-Hartley Act 51
(b) The statute vesting jurisdiction and the restraining orders thereunder are void because they are repugnant to the Constitution of the United States. 51
1. The Thirteenth Amendment 53
2. The First Amendment ... 62
3. The Fifth Amendment ... 66
4. The statute vests the Federal courts with the exercise of nonjudicial powers and is therefore void under Article III of the Federal Constitution 70
II. Petitioners were not legally bound to comply with the restraining order because its issuance was beyond the court's jurisdiction and it required performance of illegal and unconstitutional conduct 71

Page

III. Judgments and Sentences of criminal contempt are without supporting factual basis and are contrary to law 77
1. The trial court's Findings of Fact and Conclusions of Law of Union's responsibility for the alleged strike are not supported by competent and substantial evidence and are contrary to the evidence and to law 77
2. The District Court's finding of imperilment of the national health or safety is not supported by competent and substantial evidence. The Court of Appeals erred in holding that the national emergencies provisions were not involved in the contempt proceedings 85
3. There is no evidence that Union and Lewis contemned the the Court's order 89

IV. The fines imposed upon the Union and John L. Lewis are in no way related to any competent and substantial evidence and are contrary to law. They are excessive by Constitutional and decisional standards 95

V. The Restraining Orders and Judgments in criminal contempt were beyond the Court's jurisdiction because jurisdictional prerequisites were lacking 101
1. The dispute involved herein is not a "dispute" within the purview of Sections 206-210 of the Act 101

Page

2. The Complaint and Exhibits attached thereto did not suffice to invoke the jurisdiction of the Court 103

VI. There was no jurisdiction to issue the preliminary Injunction. Its issuance was also without supporting evidence and contrary to law 106

VII. The Court of Appeals erred in dismissing the appeal in case No. 9944 as moot 108

VIII. Issuance of the Rule to Show Cause was in violation of Rule 42(b), Federal Rules of Criminal Procedure .. 110

IX. Conclusion 111

Appendix 112

Labor-Management Relations Act:

Section 206-210 112

Section 501 (2) 114

Section 502 114

Constitutional Provisions:

Rule 52(a), Federal Rules of Civil Procedure, as amended 116

Rule 65(b), Federal Rules of Civil Procedure, as amended 116

CASES CITED

American Steel Foundries v. *Tri-City Central Trade Union*, 257 U. S. 184 ..... 53, 67

Arthur v. *Oakes*, 63 F. 310 ..... 53, 61

Alabama State Federation of Labor v. *McAdory*, 246 Ala. 1, 18 So. (2d) 810 56

American Federation of Labor v. *Reilly*, 155 P. (2d) 145, (Colo., 1944), 160 A.L.R. 873 59

American Federation of Labor v. *Swing*, 312 U. S. 321 64

Anderson v. *Dunn*, 6 Wheat. 204, 231, 5 L. Ed. 242 ... 40, 90

Bayonne Textile Corp. v. *American Federation of Silk Workers*, 116 N. J. Eq. 146, 172 A. 551 54

Beck v. *Teamsters Protective Union*, 118 Mich. 497 .. 54

Page

Bailey v. *Alabama*, 219 U. S. 219 55
In re Blaney, 184 P. 2d 892 (Cal. 1947) 57, 75
Birmingham Trust & Sav. Co. v. *Atlanta*, 271 F. 743 61
Behre v. *Anchor Inc., Co.*, 297 F. 986 (CCA 2) 103
Bridges v. *California*, 314 U. S. 252 ..... 65, 87
Carpenters' Union v. *Citizens Committee*, 333 Ill. 225, 164 N. E. 393 (1928) 54, 55
Cantwell v. *Connecticut*, 310 U. S. 296, 304 57
Carpenters and Joiners Union of America v. *Ritter's Cafe*, 315 U. S. 722 58
Carlson v. *California*, 310 U. S. 106 64
Connolly v. *General Construction Co.*, 269 U. S. 385 70
Carmack v. *U. S.*, 135 F. (2d) 197 (CCA 8, 1943) 71
Cochran v. *United States*, 41 F. (2d) 193 (CCA 8) 79
Coronado Coal Company v. *United Mine Workers of America*, 268 U. S. 295 ..... 40, 82, 83, 85
Delaware L. & W. R. Co. v. *Switchmen's Union of North America et al.*, 158 F. 541 (CCA 8) 53, 54
De Jonge v. *Oregon*, 299 U. S. 353 ..... 57, 59
Dorchy v. *Kansas*, 272 U. S. 306, 311 57
Dorchy v. *Kansas*, 264 U. S. 286, 289 67
Debs, In re, 158 U. S. 564, 598 ..... 105, 106, 111
Ex Parte Grossman, 267 U. S. 87, 117 96
Ezzard v. *United States*, 7 F. (2d) 808 (CCA 8) 79
Felton v. *U. S.*, 96 U. S. 699 94
Frost v. *Railroad Commission*, 271 U. S. 583, 593 62
Ex Parte Fisk, 113 U. S. 713 75
Gay Union Corp. v. *Wallace*, 71 App. D. C. 382, 112 F. (2d) 192, cert. denied (310 U. S. 647) 41, 110
Gompers v. *Buck's Stove & R. Co.*, 221 U. S. 418, 444 ..... 81, 82
Hall v. *Johnson*, 87 Ore. 21, 169 P. 515 ..... 54, 61
Henderson v. *Coleman*, 7 So. (2d) 117 (Fla.) 55
Ex Parte Henry, 215 S. W. (2d) 588 (Texas, 1948) 76
Hopkins et al. v. *Oxley Stave Co.*, 83 F. 912 (CCA 8, 1897) 53
Hotel Employee Alliance v. *Greenwood*, 30 So. (2d) 696 (Ala. 1947) 53, 63
Howat v. *Kansas*, 258 U. S. 181 73
Int. Union of United, etc., Workers of America v. *McNalley*, 22 L.R.R.M. 2391 (Mich. Cir. Ct., Aug. 3, 1948) 55, 66

Page

In re Rice, 181 F. 217, 228 93
Lindsay & Co. v. *Montana Fed. of Labor*, 37 Mont. 264, 96 P. 127 54
Longshore Printing Co. v. *Howell*, 26 Ore. 527, 38 P. 547 54
McCann v. *N. Y. Stock Exchange*, 80 F. 2d 211 111
Matter of Michael, 326 U. S. 224 ..... 40, 90, 93
Michaelson v. *United States*, 266 U. S. 42 ..... 77, 79
Milkwagon Drivers Union v. *Lake Valley Farm Products, Inc.*, 311 U. S. 91 101
Minn. St. Ry. Co. v. *City of Minneapolis*, 189 F. 445 103
Myers v. *U. S.*, 264 U. S. 95, 98 96
Myers v. *State*, 22 N. E. 43 (Ohio, 1889) 99, 100
N.L.R.B. v. *Fansteel Metallurgical Corp.*, 306 U. S. 240, 256 54
N.L.R.B. v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1 ..... 55, 66
Near v. *Minnesota ex rel. Olson*, 283 U. S. 697 ..... 62, 63
O'Malley v. *Chysler Corporation*, 160 F (2d) 35, 36 69
Oyama v. *California*, 332 U. S. 633, 636 62
Pollock v. *Williams*, 322 U. S. 4, 17 56
Penfield Co. v. *Securities & Exchange Commission*, 330 U. S. 585, 594 ..... 96, 111
Ex Parte Rowland, 104 U. S. 604, 618 75
Schenck v. *United States*, 249 U. S. 47, 52 ..... 65, 87
Schneider v. *Irvington*, 308 U. S. 147, 161 65
Southern Pacific Terminal Co. v. *Interstate Commerce Com.*, 219 U. S. 498, 515 ..... 41, 109
Stapleton v. *Mitchell*, 60 F. Supp. 51 ..... 54, 55, 57, 62
State Ex rel. Dairy Land Power Coop. v. *Wisconsin Employment Relations Board*, 21 L.R.R.M. 2508 (Wis. Circuit Ct., 1948) 59
State v. *Koon* (Mo.), 201 S. W. (2d) 446, 457 98
Traffic Telephone Workers Federation of N. J. et al. v. *Driscoll*, 71 F. Supp. 681 (D.C., D.N.J., 1947) 54
Thomas v. *Collins*, 323 U. S. 516, 543 ..... 39, 59, 62
Thornhill v. *Alabama*, 310 U. S. 88 ..... 65, 87
United States v. *Petrillo*, 332 U. S. 1 70
United States v. *Petrillo*, 68 F. Supp. 845 67
U. S. v. *C.I.O.*, 335 U. S. 106, 129, 146 ..... 58, 64
United Mine Workers of America v. *Coronado Coal Company*, 259 U. S. 344 ..... 40, 82, 85

Page

United States v. *United Mine Workers of America*, 330 U. S. 258 ..... 26, 34, 40, 48, 72, 73, 74, 76, 86, 95, 97, 98, 99, 100, 111
United States v. *Murdock*, 290 U. S. 389, 394 92
United States v. *Goldman*, 277 U. S. 229, 235 92
U. S. v. *Kroger Grocery & Baking Co.*, 163 F. (2) 168 (CCA 7, 1947) 93
U. S. v. *Socony-Vacuum Oil Co.*, 310 U. S. 150 94
Van Gorder v. *United States*, 21 F. (2d) 939 (CCA 8) 79
Walling v. *Haile Gold Mines*, 136 F. (2d) 102, 105 (CCA 4, 1943) 41, 110
Wilson & Co. v. *N.L.R.B.*, 120 F. (2d) 913 (CCA 7, 1941) 54
Winters v. *New York*, 333 U. S. 507, 515 70
Wolff Packing Co. v. *Court of Industrial Relations*, 262 U. S. 522 ..... 67, 104
Ex Parte Young, 209 U. S. 123 75

MISCELLANEOUS CITATIONS

135 A.L.R. 290 61
11 Am. Jur., Subject Constitutional Law, Sections 339, 341 66
28 Am. Jur., Subject Injunctions, Sections 21, 20 69
49 Am. Jur., Subject Specific Performance, 134-135 et seq. 61
43 C. J. S., Injunctions, Sec. 5, par. 410-12 69
Edmunds, Civil Rules of Federal Procedure, Vol. 2, 1551 103
Federal Rules of Criminal Procedure, Rule 37 ..... 3, 46
Frankfurter & Greene, The Labor Injunction, p. 134, Ch. 5 ..... 54, 56
Gregory, Government by Injunction Again, 14 Univ. of Chicago Law Review 363 56
High on Injunctions, 3d Ed., Section 2 69
23 Labor Relations Reporter 170, 172 68
McKinnon, Human Rights and National Unity, 33 Am. Bar Journal 544, 546 58
President Truman's Message Vetoing H.R. 3020, 93 Cong. Record 7485, 7487 67
Rule 52(a), Federal Rules of Civil Procedure 6, 105
Rule 65(b), Federal Rules of Civil Procedure 8, 22, 89

Page

Rule 42(b), Federal Rules of Criminal Procedure 14, 29, 51, 110
Norris-LaGuardia Act, 29 U.S.C.A. 101 ..... 52, 56
2 Scott on Trusts 173 79
Teller, Labor Disputes & Collective Bargaining, Vol. 1, p. 70 57
The Labor Management Relations Act and the Revival of the Labor Injunction, 48 Col. Law Rev. 759, 771 ..... 56, 68
Wharton's Criminal Evidence, 11th Ed. Vol. 2, Sec. 922, p. 1608 ..... 79, 81

CONSTITUTIONAL PROVISIONS CITED

Article III 10, 34, 40, 47, 53, 70
First Amendment 9, 33, 34, 38, 47, 53, 62, 63, 64, 69
Fifth Amendment 9, 33, 34, 38, 47, 53, 66, 69
Eighth Amendment 27, 37, 40, 98
Thirteenth Amendment . 9, 33, 34, 38, 47, 49, 53, 55, 59, 62, 69

STATUTES CITED

Labor Management Relations Act, 1947, Act of June 23, 1947, C. 120, Title II, Sections 206-210, 61 Stat. 155-156, 29 U.S.C.A. Sections 176-180 (National Emergencies Provision): 3, 9, 19, 28, 37, 50, 101
Section 206, 61 Stat. 155, 29 U.S.C.A. 176, 3, 9, 19, 28, 37, 50, 51, 101
Section 208, 61 Stat. 155, 29 U.S.C.A. 178, 3, 9, 19, 22, 28, 32, 33, 34, 37, 38, 46, 47, 50, 51, 52, 53, 62, 71, 74, 85, 101, 103, 105
Section 209, 61 Stat. 155, 29 U.S.C.A. 179, 3, 9, 19, 28, 37, 50, 101
Section 210, 61 Stat. 156, 29 U.S.C.A. 180, 3, 9, 19, 28, 30, 37, 50, 91, 101, 106
Section 501 (2), 61 Stat. 161, 29 U.S.C.A. 142, 18, 35, 50, 84
Section 502, 61 Stat. 162, 29 U.S.C.A. 143, 9, 18, 34, 35, 50, 59, 84
Section 303, 61 Stat. 158, 29 U.S.C.A. 187 54
28 U. S. C., Sections 1254, 2101, Act of June 25, 1948, c. 646, Public Law 773, 62 Stat. — 3, 46
36 Stat. 1163, 28 U.S.C.A. 385 75

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THE UNITED STATES OF AMERICA

PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioners, International Union, United Mine Workers of America (hereinafter called Union), and John L. Lewis,

as President, International Union, United Mine Workers of America (appellants in Case No. 9943 in the court below), and each of them, pray that writs of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit in said case, entered on the 6th day of June, 1949 (R. 554), affirming the sentences and judgments entered on April 21, 1948, against Petitioners by the District Court of the United States for the District of Columbia (R. 152, 153) for criminal contempt.

Petitioners, International Union, United Mine Workers of America (hereinafter called Union), and John L. Lewis, as President, International Union, United Mine Workers of America, and as Union Representative Trustee, Board of Trustees, United Mine Workers of America Welfare and Retirement Fund (appellants in Case No. 9944 in the court below), and each of them, pray that writs of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit in said case, entered on the 6th day of June, 1949 (R. 555), dismissing the appeal of said Petitioners (R. 178) from an order of April 3, 1948, granting a temporary restraining order (R. 81), an order denying a motion to dissolve and vacate said restraining order (R. 175) and an order granting a preliminary injunction (R. 158).

A transcript of the record in said cases,[1] including the proceedings in said Court of Appeals, is furnished herewith, in accordance with the rules of this Court.

Opinion Below

The opinion of the Court of Appeals appears at page 544 of the record.

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[1] By order of the Court of Appeals, the appeals in cases Nos. 9943 and 9944 were consolidated for the purposes of filing briefs and joint appendix

Jurisdiction

The jurisdiction of this Court is invoked under Title 28, U. S. C., Secs. 1254, 2101 (Act of June 25, 1948, chap. 646, Pub. Law 773, 62 Stat. —); Section 208 (c), Labor-Management Relations Act, 1947, 29 U. S. C. A. 178 (c), Act of June 23, 1947, chap. 120, Title II, Sec. 208, 61 Stat. 155; and Rule 37 (b) (2), Federal Rules of Criminal Procedure, as amended.

Summary and Statement of The Matter Involved

United States of America (appellee below and hereinafter called Government), on April 3, 1948, at 7:30 P. M., filed its complaint in the District Court of the United States for the District of Columbia [2] against the Union, Lewis as President of the Union and as Union Representative Trustee, Board of Trustees, United Mine Workers of America Welfare and Retirement Fund, and coal operators and associations signatories to the National Bituminous Coal Wage Agreement of 1947 (hereinafter called 1947 Agreement), "pursuant to the provisions of Section 208" of the Labor-Management Relations Act, 1947 [3] (the Act being hereinafter referred to as the "Act"), seeking, first, by a temporary restraining order and, secondly, by a preliminary injunction pending the final determination of the cause, to enjoin the continuance of an alleged strike allegedly by Union and to "obtain temporary injunctive relief and such other relief as may be necessary or proper."

(R. 543). The Court of Appeals rendered one opinion covering both cases, but entered a judgment in each of the cases. Herein the abbreviation "R." refers to the printed record.

[2] Now the United States District Court for the District of Columbia.

[3] Involved herein *inter alia*, are Sections 206-210, of the Act (29 U.S.C.A. 176-180; Act, June 23, 1947, c. 120, Title II, sections 206-210, 61 Stat. 155, 156), known as the National Emergencies provisions. See Appendix, R., page 112. The Act is referred to in the opinion of the Court of Appeals as "the so-called Taft-Hartley Act."

Upon filing of the complaint, and consonant with the prayer thereof, and without notice to the Union and Lewis, the District Court entered its temporary restraining order at 7:30 P. M., Saturday, April 3,[3a] requiring of Union and Lewis negative and affirmative conduct therein specified. Service of the order was had upon Union and Lewis on April 5 (R. 87). Promptly, on April 7, they filed their Motion To Dissolve and Vacate the Restraining Order and served notice that the motion would be for hearing on April 9 (R. 88-107).

With said Motion to Dissolve then pending in the District Court, Government on April 7 filed its Petition for Rule to Show Cause and obtained a Rule directed to Union and Lewis, as Union President, to show cause why they should not be punished as and for civil and criminal contempt (R. 116-124) for alleged violations of said temporary restraining order. The District Court agreed with the contentions of Government that Union and Lewis, as Union President, had contemned the restraining order of April 3, and on April 21, having found Union and Lewis guilty of both criminal and civil contempts, ordered Union to pay a fine of $1,400,000.00 and Lewis to pay a fine of $20,000.00 as and for criminal contempt (R. 152-153). Case No. 9943 in the Court of Appeals was concerned with the appeal from such judgments and sentences. The Court of Appeals affirmed these judgments (R. 554), and it is from such judgments of affirmance that Union and Lewis, as Union President, herein seek writs of certiorari to review the judgments of the Court of Appeals.

Following issuance of the *ex parte* temporary restraining order on April 3, and within two days after service thereof upon them, Union and Lewis filed their Motion to

[3a] Unless otherwise indicated, the year 1948 is applicable to all dates hereinafter mentioned.

Dissolve and Vacate the Restraining Order and requested hearing thereon on April 9. The trial court rejected the motion on April 21 after imposition of the fines abovementioned. On the same day it entered a preliminary injunction. The appeal in Case No. 9944 concerned the validity of the *ex parte* restraining order of April 3, (R. 81), the denial of said Motion to Dissolve and Vacate the Restraining Order (R. 175) and the issuance of the preliminary injunction on April 21 (R. 158). The Court of Appeals dismissed the appeal because it was of opinion that it is moot (R. 555). Union and Lewis, as President thereof and as Union Representative Trustee, seek writs of certiorari to review such judgment of dismissal.

A. The Matters Involved in the Contempt Proceedings (Case No. 9943)

The essence of the Government's complaint (R. 7) is that: The 1947 Agreement, executed by the Union and coal operators and associations, established the United Mine Workers of America Welfare and Retirement Fund (hereinafter called Fund) in which John L. Lewis represents the Union and Ezra Van Horn represents the operators. A third, or neutral, Trustee[4] had resigned on January 16, 1948 since which date no neutral Trustee had been appointed. The 1947 Agreement required that the three Trustees designate a portion of the payments into the Fund as a separate fund to be administered by the Trustees for pensions or annuities for Union members, or their families or dependents, and such other persons as may be properly included as beneficiaries thereunder. Trustees failed to activate this pension fund and plan, and the Union and coal operators signatory to the Agreement failed to re-

[4] Thomas E. Murray.

solve the existing dispute through collective bargaining in accordance with the Agreement. As a result, "The Union went on strike against the operators signatory to the Agreement," and Union and the operators "are not at this time engaged in collective bargaining" as contemplated by the 1947 Agreement.[5] On March 23 the President of the United States appointed a Board of Inquiry[6] to inquire into the issues involved in the dispute. On March 31, the Board submitted its report to the President who, on April 3, directed the Attorney General of the United States to institute the action.

Without finding (and in violation of Rule 52(a) of the Federal Rules of Civil Procedure) that Union or Lewis was responsible for the alleged strike, and without notice to either of them, and consonant with the prayer of Government's complaint, the District Court at 7:30 P. M., April 3, entered a temporary restraining order enjoining the Union, its officers, agents, servants and employees, and all persons in active concert or participation with them (1) "from continuing the strike now in existence at bituminous coal

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[5] The 1947 Agreement in paragraph 3, Miscellaneous Section, provides, *inter alia*, that:

> "The contracting parties agree that, as a part of the consideration of this contract, any and all disputes, stoppages, suspensions of work and any and all claims, demands or actions growing therefrom or involved therein shall be by the contracting parties settled and determined * * * if national in character, by the full use of free collective bargaining as heretofore known and practiced in the industry." (R. 34.)

It further provides in Paragraph D of the Fund Section of said Agreement that:

> "It is the intent and purpose of the contracting parties hereto that full co-operation shall by each of them be given to each other, the Trustees named under this Section and to all affected mine workers to the eventual coordination and development of policies and working agreements necessary or advisable for the effective operation of this Fund." (R. 28.)

[6] Pursuant to Section 206 of the Act.

mines" owned or operated by coal operators and associations signatory to the 1947 Agreement and (2) from "in any manner engaging in, permitting or encouraging the said strike or its continuation." It ordered that Union, acting through its President and other appropriate officers, agents, servants and employees, forthwith instruct its members employed in said mines to cease the said strike and immediately to return to their employment, and that the Union, acting as aforesaid, cease, desist and refrain from ordering, encouraging, recommending, instructing, inducing or in any wise permitting the said strike to continue. It further ordered the Union and Lewis, as President thereof and as Union Representative Trustee, and all persons in active concert or participation with them, to refrain from encouraging, causing or engaging in a strike at said mines or from in any manner interfering with or affecting the orderly continuance of work at said mines, and from taking any action which would interfere with the Court's jurisdiction.

The restraining order likewise ordered the Union and operators and associations signatory to the Agreement to bargain with reference to the dispute and carry out the provisions of the 1947 Agreement set out herein in footnote 5 "in order that said Fund may be activated at the earliest possible time." (R. 86)

The restraining order, effective until April 13, and served on Petitioners Union and Lewis on April 5, was challenged by their filing, on April 7, their Motion to Dissolve and Vacate Restraining Order.[7] With this motion pending in the District Court and with notice to Government that hear-

[7] The defenses and objections set forth in the Motion to Dissolve and Vacate Restraining Order were included in those set forth in Petitioners' Answer to the Rule. For comparison see Motion (R. 88) and Answer (R. 125).

ing thereon would be for April 9,[8] Government filed its Petition for Rule to Show Cause, charging that Union and Lewis (as Union President) "have knowingly, wilfully, wrongfully and deliberately disobeyed and violated" the restraining order. The Petition specified the portions of the order allegedly contemned which included all commands other than the direction to bargain with the operators (R. 116). Pursuant to the Petition, the District Court issued a Rule to Show Cause why Union and Lewis, as Union President, should not be punished as and for civil and criminal contempt, and provided therein that if upon the returns of Union and Lewis, as President thereof, it shall be found that the alleged contempt be not sufficiently purged, a trial should be held at 10:00 A. M., April 14 (R. 124).

On April 12—the return day of the Rule—Petitioners filed their written Answer to Rule (R. 125), amended by consent of Court (R. 237, 248), and counsel for Petitioners also made an oral return (R. 221-246). Therein Petitioners challenged the Rule and the Petition, as well as the *ex parte* temporary restraining order. The defenses asserted and the rulings of each of the District Court and the Court of Appeals were:

1

Government, in its complaint, sought to enjoin "the continuance of an alleged strike by" Union and "to obtain temporary injunctive relief and such further relief as may be necessary or proper." Jurisdiction of the District Court was premised upon "section 208 of the Act." In their Answer to the Rule to Show Cause, Union and Lewis challenged the jurisdiction of the court, asserting that the statutory provisions upon which Government predicated

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[8] Rule 65 (b), Federal Rules of Civil Procedure required two days' notice.

its right to injunctive relief are repugnant to the First, Fifth and Thirteenth Amendments to the Constitution of the United States. There was thus presented the question whether Congress, within its constitutional authority, could vest jurisdiction in district courts of the United States authorizing them to "enjoin any such strike or lock-out, or the continuing thereof, and to make such other orders as may be appropriate," as provided in Section 208 under the circumstances and conditions set forth in Sections 206-210 of the Act, in the absence of illegality of method employed in the strike or illegality of the object or purpose thereof.

The restraining order, Petitioners charged in their Answer to the Rule, was also in violation of said Constitutional amendments, therefore void and beyond the court's jurisdiction. The Answer further charged that—

> "Violation of the miners' right to stop work and freedom from involuntary servitude is explicit in the Court's direction that the Union shall order the miners to return to their employment. Since the Court may not legally commit the Union members employed in the bituminous coal fields to involuntary servitude, it may not legally effectuate such result through its mandatory order that defendants accomplish such status for the Union's members;"

that the Order violated the 1947 Agreement which did not forbid strikes and which specifically provided that—

> "It is the intent and purpose of the parties hereto that this Agreement . . . . shall cover the employment of persons employed in the bituminous coal mines covered by this Agreement during such time as such persons are able and willing to work;"

and that it was in violation of Section 502 of the Act. The complaint averred neither illegality of manner of conduct-

ing the strike nor unlawful purpose thereof. The order nevertheless sought to compel the enforced labor and involuntary servitude of coal miners. As the District Court declared, the restraining order ordered "that the miners go back to work" and that if the national health and safety were imperiled, the miners "would have to go back into the mines" (R. 361). The order intruded upon the rights of free speech, the right to picket, the right of freedom of assembly, the right to bargain collectively; it abridged liberty of contract; it violated the requirements of due process by depriving vested contractual rights and subjected Petitioners to loss of liberty and property without due process of law. It commanded these intrusions upon rights secured by the Constitution without notice, without hearing and without first making a judicial declaration that those against whom the restraining order was directed were responsible for the alleged strike.

The question thus presented is whether a federal district court whose jurisdiction of the subject matter is based upon an unconstitutional Act could legally command, in a temporary restraining order, the performance of acts and conduct wholly in violation of the Constitution, and whether, such order being void and a nullity, could be disobeyed with impunity.

The District Court held that it had "jurisdiction of the subject matter and of the respondents herein" (R. 151). It also rejected the contention that the order was repugnant to the constitutional amendments hereinabove mentioned (R. 363-364).

In the Court of Appeals, in addition to said amendments, Petitioners urged that jurisdiction in the District Court was lacking because the statutory provisions relied upon by Government for its injunctive relief conflicted with Article III of the Constitution of the United States in that Congress

had delegated to the federal courts the legislative and non-judicial power of declaring the existence of national emergencies. The Court of Appeals, noting that the "present case does not concern the meaning of the Agreement between the miners and the operators, or the right to strike, or the so-called Taft-Hartley Act," held that "The point is simply that an order issued by a court with jurisdiction over the subject matter and the persons, in a case within its general powers, must be obeyed until reversed by orderly and proper proceedings" (R. 551). The Court of Appeals did not concern itself with Petitioners' contention that the restraining order commanded acts and conduct in violation of the Constitution and that judicial power could not transcend the Constitution itself.

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In the Answer and oral return to the Rule, Petitioners denied that they had "knowingly, wilfully, wrongfully and deliberately disobeyed and violated" those portions of the temporary restraining order averred to have been so disobeyed and violated. They denied all other material averments of the Petition for the Rule, and asserted (1) that Union had done and committed no act to engage in, permit or encourage the alleged strike or its alleged continuance, that it "was and is now under no legal duty or requirement to discontinue, bring to an end and cease the alleged 'strike in existence' "; (2) that Petitioner Lewis had neither done nor committed any act to bring about and cause or to encourage the alleged strike or its alleged continuance and therefore said Lewis "was and is now not under any legal duty or requirement to 'cease from permitting and encouraging' the alleged strike and its alleged continuation"; and (3) that the Complaint with its exhibits and affidavits show that Union and Lewis have "committed

no act which justified the issuance of either the restraining order or the Rule against them, or either of them" (R. 128-129).

The verbal return advised the Court that since April 8 "duly accredited representatives of Respondents [Petitioners] have since April 8 and now are meeting with representatives of" operators (R. 236).

Attached to and as parts of said Answer was the supporting affidavit (with exhibits) executed by Lewis, dated April 7 (R. 129, 130, 91-107) which denied responsibility of Union and Lewis for the stoppage of work by coal miners, individually or collectively (R. 96), and asserted that such stoppages which had occurred "have been and are those, and those alone, which the men affected thereby individually and of their own volition determined." (R. 97, 107).

A second affidavit, dated April 12, filed (R. 135) and made part of the Answer to the Rule (R. 248) executed by Lewis, advised the Court that on April 10, the prior existing Trustee vacancy had been filled by the appointment of, and acceptance by, Honorable H. Styles Bridges; that Lewis, as Chairman of said Fund, immediately after the selection of and acceptance by the neutral Trustee, called said Board of Trustees into special session on Sunday, April 11; that on April 12, 1948, there had been dispatched to all District Presidents and members of the International Board of said Union, a telegram reading as follows (R. 235):

> "This message is for your official information and for immediate transmission to all members of The Union. *The Trustee vacancy in the 1947 Welfare Fund has now been filled by the selection of the Honorable H. Styles Bridges who has accepted the appointment. An early resolution of the questions at issue may now be expected. Your voluntary cessation of work should now be terminated and your protest ended. It is the*

belief of the International Union and your officers that the production of coal should be resumed forthwith. It is to your best interests and those of our Union and the public welfare that this be done. Therefore, you are now officially advised that you should return to your usual employment immediately upon receipt of this telegram. This message is sent in behalf of the International Union as well as in my official capacity as President.

JOHN L. LEWIS,
President, United Mine Workers of America,"
(Italics supplied);

that in addition thereto there had been dispatched to all of Union's approximately twenty-seven hundred Locals the following telegram, likewise under date of April 12 (R. 236):

"Pensions granted. The Agreement is now honored.
JOHN L. LEWIS."

Petitioners' contentions, both in denial of their responsibility for the work stoppage, and in denial of their disobedience and violation of the temporary restraining order, as charged in the Petition for the Rule, were sustained by facts detailed in the affidavits and exhibits attached to the Answer to the Rule and in the oral return made by Petitioners' counsel. These facts appear in the narration of the facts adduced at the hearing on the issue of contempt, which follows.

Believing that resumption of the production of coal would ensue quickly, counsel for Union and Lewis sought a week's postponement of the contempt trial (R. 244), but the District Court abruptly announced (R. 245):

"The Court sets this case down at Wednesday at 10:00 o'clock. No debate; no argument."

On April 14, at the inception of the trial for contempt, Petitioners' oral motion to dismiss the Rule to Show Cause because not in conformity with Rule 42 (b) of the Federal Rules of Criminal Procedure was rejected summarily (R. 248). Petitioners' motion to dismiss said Rule (R. 249) was likewise overruled. A formal plea of not guilty as to the civil contempt and to the criminal contempt as charged (R. 249) was entered by each of Petitioners.

Narration of Facts

In the hearing on the issue of alleged contempt on April 14, Government proceeded to offer proof on (1) the existence of a strike and the responsibility of Union and Lewis therefor, (2) that Union and Lewis had, as charged in the Petition for Rule to Show Cause, "knowingly, wilfully, wrongfully and deliberately disobeyed and violated" portions of the temporary restraining order, and (3) that the alleged strike, if permitted to continue, would imperil the national health or safety.

a. On the issue of the Existence of a Strike and the Responsibility of Union and Lewis therefor.

The Agreement of 1947 provided *inter alia* for the Fund to be operated by a Board of Trustees, one to be appointed as the representative of the coal operators signatory to the Agreement, one as the representative of said Union, and a third, or neutral, Trustee to be selected by the other two. By its terms, the operators appointed Ezra Van Horn as their representative, and the Union appointed John L. Lewis as its representative. These two selected Thomas E. Murray as the neutral Trustee. The Agreement provided in part:

> *"The aforesaid Trustees shall designate a portion (which may be changed from time to time) of the pay-*

ments herein provided, based upon proper actuarial computations, as a separate fund to be administered by the said Trustees herein described and to be used for providing for pensions or annuities for the members of the United Mine Workers of America or their families or dependents and such other persons as may be properly included as beneficiaries thereunder" (R. 25). (Italics supplied.)

Failure of the Trustees to activate such Fund and resignation of the neutral Trustee Murray, tendered on January 16, resulted in Lewis' directing a joint letter (R. 98) to Benjamin Fairless, President of United States Steel Corporation, and George Humphrey of the Pittsburgh Consolidation Coal Company on January 20, 1948, advising them of Van Horn's continuous refusal to activate the pension fund and his refusal to agree to any pending proposals which seek to designate such pension fund; that a dispute thereon has arisen and "remains unresolved" thereby defeating one of the major provisions of the Agreement and calling upon Fairless and Humphrey as joint principals, who, as representatives of and on behalf of the bituminous coal industry, had negotiated the Agreement, "to settle and determine said dispute by the full use of free collective bargaining as heretofore known and practiced in the industry." (R. 99, 100). Further, Lewis suggested a joint meeting to be held not later than five days "from this date", and that the correspondence not be made public (R. 100). Unsatisfactory responses from Fairless (R. 465) and Humphrey (R. 468) prompted Lewis' advising them on January 30, 1948, that the Union dissented from their views and that United Mine Workers "reserve the right at will to take any independent action necessary to the enforcement of the contract." (R. 469).

On February 2, a Notice, signed by Lewis, as President of the Union, was directed "To All Signatories to the Na-

tional Bituminous Coal Wage Agreement of 1947", advising that Van Horn, the Operator Trustee, seven months after the effective date of the Agreement, "continues (as he has consistently continued) to thwart the fulfillment of that contractual obligation"—referring to the designation of the pension fund—and further "It now constitutes an outstanding, unresolved dispute, national in scope and character, affecting the contract and impeding its fulfillment." It concluded, "The United Mine Workers of America, therefore, now advise you as a signatory to the Agreement that it reserves the right at will to take any independent action necessary to the enforcement of the contract." (R. 101).

Under date of March 12, 1948, Lewis, Trustee of the Fund, and President of Union, sent to "All Officers and Members of Local Unions in all bituminous districts of the United States" a circular advising them, *inter alia,* that "For eight months the bituminous coal operators, through their Trustees * * * have dishonored the 1947 Wage Agreement and defaulted under its provisions affecting the Welfare Fund", advising them that no payments of any character to any beneficiary had been made from the 1947 Fund, amounting on March 6 to $29,494,032.87, "all lying unused in the banks", and the circular closed as follows:

> "Please discuss this matter in your Local Unions so that our membership may be fully advised. You will later hear more from this office on this subject." (R. 102-104.)

On April 3, 1948, and prior to the release by the President of the Report of the Board of Inquiry and the President's direction to the Attorney General to institute suit, Lewis, Trustee, and President aforesaid, released a circular directed to "Officers And Members of All Local

Unions In All Bituminous Districts of the United States", wherein he informed them of the events which had occurred since March 12, 1948, and wherein he declared, in part, (R. 106):

> "It is well known to you that I have not in connection with the present dispute, * * * authorized, directed, suggested, requested or recommended any stoppage of work or any continuation of any stoppage and I do not now do so.
>
> "Your actions in this regard in the original instance were your own, individually determined by you. I asked you on March 12 'to discuss the matter in your local union so that our membership may be fully advised.' Such discussions as may have been held, or which you may hereafter desire, have been, and will continue to be, on your own initiative. As far as I know it is still the inherent right and privilege of American citizens to continue to exercise the right of free speech and freedom of assembly.
>
> "Any action or decision which you may now care to take continues to be entirely for your own determination without direction of any character from me or from any of your International Officers."

To prove the existence of the alleged strike, Government offered the testimony of W. H. Young, Chief of the Bituminous Coal Section of the Coal Economics Branch of the United States Bureau of Mines, who testified, over Petitioners' objection, that production, *as estimated,* for the weeks ended March 6 and March 13, the last two weeks of full output immediately preceding the work stoppage, was 13,025,000 tons and 13,314,000 tons, respectively, and for the weeks ending March 27 and April 3, production dropped to 2,120,000 and 2,135,000 tons, respectively, representing approximately 16% of production prior to the work stoppage (R. 261-3), from which the witness concluded that, during the work stoppage, approximately 84%

of the miners left their employment, and that 16% of the miners remained in their employment, and that of the total number of miners in the bituminous coal industry, approximately 87% are represented by Union (R. 264). This witness likewise testified, over Petitioners' objection, that of 400,000 miners regularly employed in the bituminous coal industry, 224,371 miners failed to report for work by March 18 (R. 266). For the week ending March 20 production was 4,360,000 tons (R. 455).

Though under Section 501(2) of the Act the term "strike" includes "any strike or other *concerted* stoppage of work," and though there is nothing in the evidence showing that the miners acted in concert or pursuant to any agreed plan, and though Government's Exhibit 5 (R. 456) shows that coal miners left their work at different times, the District Court found and concluded as a matter of law that the walk-out was a strike within the definition of said section and did not constitute the exercise of the right of individual employees to quit their labor, as provided in Section 502 of the Act but was a strike on the part of the Union and was being carried on by the Union. (R. 150-1). The Court of Appeals (R. 553) held that the evidence "is overwhelming that the walk-out was concerted," thereby affirming the trial court's finding. (R. 150.)

The District Court found also that the letter of March 12, 1948, was written and sent with the express purpose of ordering, calling, and causing a strike on the part of Union, and that the effect of the transmittal of the letter was to cause the strike.[9] The Court admitted that its decision was based wholly on circumstantial evidence [10] and upon its characterization of the March 12 letter as "a nod,

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[9] See Findings of Fact 18(b) and (c), 19 (R. 150). The findings discussed were applicable also to the preliminary injunction.

[10] R. 381.

or a wink, or the use of a code".[11] Though Union and Lewis insisted that the work stoppages had been individually determined by the miners, the District Court declared that if the "national health and safety" were imperiled "they would have to go back into the mines." (R. 361.) The District Court, having already announced Union and Lewis responsible for the walk-out, then duplicitously pronounced what it termed its novel postulate that "as long as a union is functioning as a union it must be held responsible for the mass action of its members." (R. 365.)

The Court of Appeals, though affirming the judgments of conviction for contempt, clearly regarded it irrelevant whether the Petitioners caused the walk-out. In at least two places in its opinion that Court stated that Petitioners "were not convicted for causing the walk-out." An analysis of the Court's opinion results in the novel doctrine that, federal District Courts may require obedience to their orders and may require, not merely the maintenance of a *status quo* but the restoration of a *status quo ante*—and punish for disobedience thereto—although neither allegations initiating the action nor the evidence show the alleged contemnors caused, or brought about, the condition which the Court seeks, in such an order, to correct.

b. On the issue Whether the Alleged Strike if Permitted to Continue for the Period Provided in Sections 206-210, Would Imperil the National Health or Safety.

At the hearing on the issue of contempt, Government offered the testimony of four Government employees and officials, to prove that the national health and safety were

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[11] In speaking of the March 12 letter, the District Court remarked: "Now, does that constitute a nod, or a wink, or the use of a code in order to call a strike? Is there any other reasonable interpretation?" (R. 365.)

imperiled.[12] The testimony of these witnesses and the exhibits in connection therewith were not within their personal knowledge; it was hearsay and speculative. Witness Young admitted that proof offered by Government through him "involves, of course, making certain assumptions." (R. 271.) This witness further admitted with reference to Exhibit 7, admitted in evidence over Petitioners' objection, that:

> "This table merely purports to show, by arithmetic, and only by arithmetic, based on a previous assumption with reference to the consumption pattern for the previous month, how long a theoretical stockpile would last if that rate of consumption continues for a certain number of days." (R. 276)

The Court, over Petitioners' objections, erroneously admitted such testimony and evidence, to Petitioners' prejudice, on the theory that "this information was received as official." While the evidence discloses that the Office of International Trade, Department of Commerce, suspended bituminous coal export licenses and that orders were issued requiring carriers of both passenger and freight service to reduce their mileage, and Government witnesses testified that curtailment of coal production would have an effect upon certain plants, Government's witnesses failed to take into consideration that coal was being produced at the rate of more than two million tons per week (R. 279), nor did they give consideration to curtailment of production in relation to the eighty-day period, which is the maximum period for which the statute authorizes that a strike be enjoined. Furthermore, though Exhibits 7 and 11, ad-

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[12] Those testifying were W. H. Young; Lewis Bassie, Acting Director of the Office of Program Planning, Department of Commerce; Nelson Lee Smith, Chairman of the Federal Power Commission; Arthur Gass, Director of Rail Transportation, Office of Defense Transportation.

mitted in evidence over Petitioners' objections, purport to show that within fifteen days electric power utilities, coke plants, steel and rolling mills, and other industrial enterprises would exhaust their stockpiles of bituminous coal, yet on April 14—the date of the hearing—both witnesses Young and Bassie (R. 275, 296) admitted on cross-examination that they knew of no consumers whose stockpiles had been exhausted. While Bassie asserted curtailments of the use of coal in the steel industry, there is nothing in the record to show such curtailment to be due to any alleged work stoppage in coal production; and Bassie admitted that furnaces in the steel industry are shut down in all periods of each year for reasons independent of coal shortages. (R. 296) He admitted, too, that all Government restrictions on the use of railroad coal-burning facilities had been cancelled because of "early resumption of normal mining operations." (R. 297, 298) Nelson Lee Smith testified that "We have data obtained from electric utilities representing the bulk of the industry which shows as of April 8, 1948, the "system had an average of about 49—the precise figure is 49.7—days' supply of bituminous coal." (R. 304) Likewise witness Gass testified that for the week ended April 12, 1948, railroads had a stockpile sufficient to last 20.3 days. (R. 319, 324) Gass further testified that orders for reductions in railroad services were rescinded because

> "the action of the United Mine Workers in advising their people to return to work was taken on Monday. We waited until Tuesday morning to measure the return to work of the miners and the number of cars that were ordered, before we took any action, and we felt when we had a return of I would say, about 60 per cent plus, on a rough guess, of the productive capacity of the mines—we felt then that we were safe * * * in suspending the orders pending further action." (R. 325)

The District Court found, both factually and as a conclusion of law, that the "strike, if permitted to continue, will imperil the national health and safety, within the meaning of the Act, and had caused irreparable injury to Government and the industry and economy thereof. (R. 150, 151) The Court of Appeals was of opinion that "The present case does not concern * * * the right to strike, or the so-called Taft-Hartley Act," although Government instituted its action under and pursuant to said Act and a prerequisite to the Court's jurisdiction to enjoin, under Section 208 (a) (ii), is that the strike, "if permitted to occur or to continue, will imperil the national health or safety."

c. On the issues whether Union and Lewis had "knowingly, wilfully, wrongfully and deliberately disobeyed and violated" the restraining order and the penalties imposed on Union and Lewis.

The restraining order allegedly contemned was served on Union and Lewis at 11:22 A. M. on April 5. Two days later they filed their Motion to Dissolve and Vacate the Restraining Order and gave notice to Government that they would bring on the motion for hearing on April 9,[13] but the court scheduled it for hearing on April 12. On April 8 duly accredited representatives of Petitioners met and continued to meet with representatives of bituminous coal mine operators (R. 148, 236). On April 10 (Saturday) Honorable Joseph W. Martin, Jr., then Speaker of the House of Representatives of Congress, called a conference which both Lewis and Van Horn attended and whereat it was mutually agreed by Trustees Lewis and Van Horn, at Martin's

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[13] Rule 65 (b), Federal Rules of Civil Procedure, requires two days notice.

suggestion, that Honorable H. Styles Bridges should be selected as third or neutral trustee of the Fund. At approximately 11:13 A. M., Saturday, April 10, Bridges acknowledged to Martin in telephonic conversation his acquiescence, which was communicated to Van Horn and Lewis, who, as Fund Chairman, forthwith called a Trustees' meeting for 10:00 A. M., Sunday, April 11 (R. 492-494).

At the Sunday meeting Chairman Lewis referred to the extreme urgency of the situation confronting the Trustees and reviewed the matter of the pension fund and plan, giving his position thereon. Van Horn stated his position remained unchanged (R. 494). At Bridges' request for time to review the situation, the meeting adjourned after agreement by the Trustees to meet at 8:30 A. M., Monday, April 12 (R. 494).

On the morning of April 12, Lewis, as Union's President and on Union's behalf, sent to each of Union's District Presidents and Executive Board Members in the bituminous coal mines the telegram herebefore mentioned, for transmittal to Union members, advising them that:

> "The Trustee vacancy in the 1947 Welfare Fund has now been filled by the selection of the Honorable H. Styles Bridges who has accepted the appointment. An early resolution of the questions at issue may now be expected. Your voluntary cessation of work should now be terminated and your protest ended. It is the belief of the International Union and your officers that the production of coal should be resumed forthwith. It is to your best interests and those of our Union and the public welfare that this be done. Therefore, you are now officially advised that you should return to your usual employment immediately upon receipt of this telegram. This message is sent in behalf of the International Union as well as in my official capacity as President." (R. 474)

The Trustees' meeting scheduled for April 12 convened at 8:35 A. M. Trustee Bridges submitted a plan (R. 496, 530) which was adopted by the vote of Trustees Lewis and Bridges. Trustee Van Horn voted against it. (R. 495) A second telegram dispatched to Union's locals by Lewis advised them that (R. 475)—

"Pensions granted. The Agreement is now honored."

Though John Owens, Secretary-Treasurer of the Union, testified that the above two telegrams were the only documents between April 3 and April 12 in his files advising Union members to return to work, Petitioners contend that the conduct of Petitioners constituted a full, complete and good faith compliance with the restraining order and resulted in accomplishing the end proposed by Government in the institution of its action, namely, the resumption of coal production.

Petitioners, and each of them, at the conclusion of the testimony in the contempt proceeding, on April 14 moved (1) to strike Government's testimony and for judgments of acquittal, and (2) that Petitioners be discharged of and from the Rule to Show Cause and that said Rule be vacated, dismissed and fully discharged. These motions were overruled (R. 347-348). On April 19, the District Court in an oral opinion found that Petitioners were "guilty of civil contempt in a technical manner" (R. 368), and that "the evidence, beyond all reasonable doubt—practically beyond all doubt—* * * is sufficient to show that the defendants are guilty of criminal contempt." (R. 368) On April 21, the Court entered its Findings of Facts and Conclusions of Law (R. 142-152), to which Petitioners excepted (R. 390). Petitioners' motion in arrest of judgment was overruled (R. 369, 370).

Over Petitioners' exceptions (R. 390), the District Court found and held that Petitioners "since the service upon them on April 5, 1948, of the temporary restraining order of this Court, beyond a reasonable doubt, wilfully, wrongfully and deliberately disobeyed and violated the terms of the said temporary restraining order, and have obstructed and interfered with the determination of this case by the Court" and that Union and Lewis, as Union President, were guilty beyond a reasonable doubt of both civil and criminal contempt (R. 150-152).

The Court of Appeals admitted that the evidence supports Petitioners' claim that they endeavored to settle the basic dispute. (R. 552) Actually, their efforts settled the basic dispute. The Court's admission is at total variance with its statement that the evidence "also shows conclusively that pending the settlement of that dispute they made no attempt to restore normal production." Inconsistent too with the admission that Petitioners had endeavored to settle the basic dispute is the Court of Appeals' holding that "we cannot say that there was necessarily a reasonable doubt upon that score, or that the findings of fact were not supported by substantial evidence," (R. 552) with reference to the trial court's conclusions of guilt for criminal contempt.

The record shows no wilfull and deliberate defiance but evidences positive, good faith obedience, to the end that coal production was resumed and continued. Civil contempt sanctions were never imposed. On April 23, on Government's motion consideration of the issue of civil contempt was postponed indefinitely (R. 441); and on May 18, the Court approved Government's motion to dismiss the civil contempt. (R. 444). Petitioners promptly sought and urged judicial determination of the validity of the Court's

action in issuance of the temporary restraining order; their representatives met with representatives of the operators, and within less than seven days following service thereof on Petitioners, not only had they officially advised the miners to resume production of coal, but Petitioners had so actively directed their attentions to the situation that the *cause* for the walk-out by individual miners had been removed and the dispute fully settled. The record is totally devoid of any evidence which stamps Petitioners' conduct as showing a bad purpose, which is essential to a finding of wilfullness.

The Court asked Government to recommend penalties (R. 369). Government recommended, and the Court adopted and entered judgments and sentences on April 21, imposing a fine against the Union of $1,400,000 and a fine of $20,000 against Lewis, as and for criminal contempt. Petitioners appealed on April 26 (R. 174).

Although there was no evidence whatsoever of Lewis' or Union's financial means, Government's counsel stated that "Taking fully into account, however, Mr. Lewis' financial means, it is felt that double of the amount of the fine imposed in the previous case [14] is both appropriate and necessary." The same reasoning was employed as to the Union's fine (R. 375). Objections thereto were emphatically noted (R. 376-383). The Court of Appeals, in approving the amounts of the fines imposed, stated that Petitioners had been fined "for a similar offense a year before" and that "Measured by the prior fines, we think those in the case at bar were not excessive." It rejected Petitioners' contentions that the fines imposed were excessive under the

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[14] *United States* v. *United Mine Workers of America*, 330 U. S. 258. See statement in the record in this instant case (R. 383) that Lewis' financial condition has not "changed since the previous time alluded to" and "his circumstances remain the same."

Eighth Amendment to the Constitution of the United States, violated the standards of a prior decision of this Court, and was an abuse of the District Court's discretion. The Court of Appeals did not specifically pass upon the contention that the fine imposed upon Lewis must be reversed, since Lewis had been cited in contempt in his capacity as President of the Union (R. 124) whereas judgment was imposed upon him as an individual (R. 152) and not in his official capacity.

The Court of Appeals affirmed the judgments and sentences imposed by the District Court upon Union and Lewis as and for criminal contempt. Though finding that the evidence supports the claim that Union and Lewis endeavored to settle the basis dispute, the Court of Appeals erroneously and inconsistently stated that "it also shows conclusively that pending the settlement of that dispute they made no attempt to restore production" and that Union and Lewis "ignored the order until the basic dispute was settled." Though the Court of Appeals did not affirmatively conclude or find that either Union or Lewis, as Union president or otherwise, had caused the work stoppage, it nevertheless erroneously held that they were under a legal duty to obey the temporary restraining order. It stated that Lewis "could have officially advised them on April 5 that in view of the court's order they should return to work pending further action of the court." As to the Union, the Court of Appeals erroneously held that—

> "It was convicted because it did not exercise, or attempt to exercise, whatever powers it had to cause its members to resume work temporarily pursuant to the court's order. Quite apart from what the miners did, the Union made no attempt to direct, instruct or persuade them to return to work, and thereby it disobeyed the court's order" (R. 553).

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The Answer to the Rule charged also that jurisdiction in the District Court was lacking because the complaint and attached exhibits did not suffice to invoke the Court's jurisdiction for injunctive relief. This contention involved (1) the want of a "dispute" within the purview of Sections 206-210 of the Act; (2) the lack of averments and proof, requisite for issuance of a temporary restraining order without notice and without hearing, that the "strike sought to be enjoined herein consists of a concerted stoppage of work on the part of the Union" and that "the Union went on strike"; (3) the need of requisite proof showing that the national health or safety was imperiled; and (4) the absence of a finding by the District Court that Union or Lewis, as President thereof, had caused or been responsible for the alleged strike. These were jurisdictional factors which were prerequisites to the issuance of the restraining order, and being lacking, the order was void.

The District Court found as a conclusion of law that the statutory provisions of said Sections 206-208, and all requirements therein contained, were duly and legally carried out "prior to and in the institution of the action" (R. 151). The Court of Appeals was of the opinion that the contempt case did not involve "the so-called Taft-Hartley Act."

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The Answer to the Rule asserted that the restraining order was invalid because it exceeded the proper function of such a writ. (R. 127) The District Court disagreed. The Court of Appeals' opinion did not contain any specific reference thereto.

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Both in the Answer to the Rule (R. 127) and at the trial (R. 248) Petitioners challenged the sufficiency of the Rule

and sought its dismissal because it was not in conformity with Rule 42(b), Federal Rules of Criminal Procedure, as amended. The District Court overruled this contention. (R. 249) The Court of Appeals was agreeable to the lower court's ruling. (R. 553)

B. Matters Involved in Case No. 9944

Case No. 9944 concerned (1) the validity of the *ex parte* restraining order of April 3, (2) the denial of Petitioners Motion to Dissolve and Vacate the Restraining Order, and (3) the issuance of the preliminary injunction on April 21.

Hereinabove reference has been made to the complaint filed by Government initiating its action for injunctive relief, as well as the *ex parte* temporary restraining order issued by the District Court on April 3. On April 7, Petitioners filed their Motion to Dissolve and Vacate the Restraining Order and, though a request for hearing thereon on April 9 was served upon Government, the Court did not rule thereon until April 21, when it was summarily overruled (R. 175). On April 12 Petitioners' Answer to Motion for Preliminary Injunction was filed (R. 130) and later amended (R. 155, 237). In one of the amendments, petitioners asserted that since the dispute was settled, Section 210 of the Act mandatorily required the discharge of the injunction proceedings (R. 155). Counsel for petitioners argued that by reason thereof, the trial court was without jurisdiction to issue the preliminary injunction (R. 434). The trial court disagreed (R. 438).

The Motion and the Answer raised all the issues asserted under the contempt proceeding (Case No. 9943) except the specific issues of alleged contempt and penalties imposed therefor. In support of the Motion and also the Answer, there was filed therewith the affidavit of John L. Lewis dated April 7, which detailed the facts of the existing

dispute, the unsuccessful efforts of Petitioners to have the coal operators signatory to the Agreement resolve the dispute through collective bargaining, and denied Petitioners' responsibility for any stoppage or cessation of work by mine workers, individually or collectively, and asserted that the 1947 Agreement specifically provided that it "shall cover the employment of persons employed in the bituminous coal mines covered by this Agreement during such time as such persons are able and willing to work," and that "the stoppages which have occurred * * * have been and are those, and those alone, which the men affected thereby individually and of their own volition determined. The members of the United Mine Workers of America are free agents in this dispute, have been at all times and are now under no compulsion or direction, express or implied, from the International Union, its International officers or any of its authorized officers, agents or representatives." (R. 96, 97.)

The Answer, as amended, also contained the John L. Lewis affidavit of April 12 (R. 135) which recited the events leading to the activation of the pension fund, including the telegrams sent on April 12, all of which has been discussed in the contempt proceeding (Case No. 9943). The Answer, as amended, also asserted that the evidence in the record showed unequivocally that the issue involved in the dispute had been adjusted and fully settled and that Section 210 of the Act mandatorily required that the District Court enter an order of discharge and dismissal of the injunction proceedings.

The hearing for the preliminary injunction was held on April 21. At the inception of the hearing on Government's motion, Petitioners agreed that the record in the contempt proceedings be adopted and incorporated as a part of the record in the matter of the preliminary injunction (R. 396-397).

In addition to the evidence adduced at the hearing on contempt, Government offered to sustain its motion for the issuance of the preliminary injunction, the testimony of employees or officials of five coal operators' associations (R. 397-422), and that of Dr. W. H. Young of the Bureau of Mines, (who stated he had, by telegrams, collected data on nine per cent (R. 426) of the total production of coal) which dealt with the 1947 production of coal by the associations, the number of men employed, the stoppage of work from and after March 15 until April 20. This testimony was admitted over Petitioners' objection. Of approximately ninety thousand men employed by said associations, more than fifty-six thousand were working on April 20. Witnesses representing three of the associations testified that there existed no dispute between the coal companies and the coal miners (R. 409, 415, 419), while another witness admitted he had no knowledge with respect to any dispute. (R. 412.) The fifth witness testified that he knew of no dispute "other than the general talk among the men that they are dissatisfied that there has not been a pension plan worked out." (R. 422.)

The aggregate production of the five associations was less than one hundred sixty millions of tons of coal produced, as compared with the total annual production, which is in excess of six hundred million tons. The aggregate production reported by Dr. Young is approximately fifty-four million tons. No testimony was offered by Government with respect to those companies which had produced the remainder, or in excess of three hundred eighty-four million tons; and on cross-examination, Government's witness Young admitted he had no information as to 91% of the coal miners. (R. 428.)

A preliminary injunction was issued on April 21 (R. 158), which substantially paralleled the restraining order

of April 3. The findings of fact and conclusions of law discussed under case No. 9943, except those relating specifically to the contempt, were included in the preliminary injunction. (R. 158.) In addition the Court found that despite the neutral Trustee appointment, the adoption of a pension plan and the dispatch of the April 12 telegrams, the strike "has continued and is in progress on this date, and the said labor dispute continues unresolved." (R. 163.) On June 23 (R. 204), the Government's Motion to Discharge the Preliminary Injunction was granted. In the Court of Appeals Government argued that the discharge of the preliminary injunction rendered the matters in Case No. 9944 moot. The Court of Appeals agreed, holding that the temporary restraining order expired by its own terms, that the preliminary injunction was discharged by the trial court, and that the appeal in that case "will, therefore, be dismissed." (R. 553.)

The Court of Appeals did not respond in its opinion to Petitioners' contention that Section 208 of the Act is still available to Government, to obtain again an *ex parte* temporary restraining order and a preliminary injunction; and that, since the validity of such orders could not be determined with finality within the eighty-day duration of an injunction, permitted by the national emergencies provisions, such orders are capable of repetition, yet evading review.

Questions Presented

Petitioners, and each of them, say that the District Court and the Court of Appeals erred in their respective rulings, findings, conclusions and judgments as they relate to the questions presented in Cases Nos. 9943 and 9944, which follow:

1. Is Section 208 of the Labor-Management Relations Act, 1947 (Act, June 23, 1947, c. 120, Title II, Sec. 208, 61

Stat. 155), unconstitutional because repugnant to the First, Fifth and Thirteenth Amendments to the Constitution of the United States?

2. Did the United States District Court have jurisdiction, power or authority, under the First, Fifth and Thirteenth Amendments to the Constitution of the United States, to issue the temporary restraining order of April 3, 1948, and the preliminary injunction of April 21, 1948?

3. Did the United States District Court have jurisdiction, power or authority, under Section 208 of said Labor-Management Relations Act, 1947, to issue the temporary restraining order of April 3, 1948?

4. Where a Congressional enactment purports to vest jurisdiction in United States District Courts to issue injunctions in violation of the First, Fifth and Thirteenth Amendments to the Constitution of the United States, and pursuant thereto a district court issues a temporary restraining order commanding the performance of acts and conduct likewise in violation of said Amendments, is obedience thereto required or is such order a nullity which may be disregarded with impunity?

5. May Congress or the federal courts, for an eighty-day period, totally deny to American workmen their right to strike for a lawful purpose and in a lawful manner, solely upon a finding by a federal district court that the national health or safety is imperiled by an actual or threatened strike or the continuation of a strike?

6. Did the District Court have jurisdiction and power to issue the Rule to Show Cause and to impose the judgments and sentences upon the Union and John L. Lewis?

7. Has Congress, by vesting federal district courts with the authority to declare the existence of a national emer-

gency, and to enjoin the occurrence or continuance of strikes, as provided in Section 208 of the Act, conferred upon such courts nonjudicial powers in violation of Article III of the Constitution of the United States?

8. Did the temporary restraining order of April 3, 1948, conflict with the First, Fifth and Thirteenth Amendments to the Constitution of the United States? Did the preliminary injunction of April 21, 1948, likewise conflict with said Amendments?

9. Was the District Court without jurisdiction to issue the restraining order, the preliminary injunction and the Rule to Show Cause, and impose the judgments and sentences upon Union and John L. Lewis because of Section 502 of the Act and because of said constitutional provisions?

10. Did the Court of Appeals err in its holding that the District Court had jurisdiction over the subject-matter and persons of Petitioners, and did it further err in holding that the instant case was one within the general powers of the District Court? Did the Court of Appeals misapply and misinterpret the decision in *United States* v. *United Mine Workers of America,* 330 U. S. 258.

11. Is there any competent and substantial evidence to support the District Court's findings of fact and conclusions of law that—

(a) The letter of March 12 was written and sent with the express purpose of ordering, calling, and causing a strike on the part of the Union against the operators and associations signatory to the 1947 Agreement.

(b) The effect of the transmittal of the letter was to cause the said strike.

(c) During the period between March 15 and March 18, members of Union, acting in concert walked out from their employment at bituminous coal mines

throughout the United States owned or operated by operators and associations signatory to the said Agreement. By the latter date, a strike affecting a substantial part of the bituminous coal industry of the United States was in progress and was being carried on by the said Union against the said operators and associations.

(d) The walk-out did not constitute the exercise of the right of individual employees to quit their labor, as set forth in Section 502 of the Act, but was a strike on the part of the Union.

(e) The walk-out on the part of the Union was a strike as defined in Section 501 (2) of the Act.

(f) The strike, if permitted to continue, will imperil the national health and safety within the meaning of the Act.

(g) The strike has caused irreparable injury to the United States and to the industry and economy of the United States,

and are they contrary to law, both as to the restraining order of April 3, 1948, and the preliminary injunction of April 21, 1948? Is the District Court finding and conclusion that on April 21, 1948 the strike has continued and is in progress and the labor dispute continues unresolved supported by any competent and substantial evidence, and is it contrary to law?

Did the Court of Appeals err in failing to reverse such findings and conclusions?

12. Did the District Court err in holding Petitioner International Union, United Mine Workers of America, responsible for the alleged mass action of its members?

13. Did the District Court err in its findings of fact and conclusions of law that Petitioners, and each of them, had, beyond a reasonable doubt, wilfully, wrongfully and

deliberately disobeyed and violated the terms of the said temporary restraining order, and obstructed and interfered with the determination of the case by the Court, and that Petitioners, and each of them, had, beyond a reasonable doubt, been guilty and are now guilty of a criminal contempt of the District Court, since there is no competent and substantial evidence to support such findings and conclusions, and they are contrary to law; and did the Court of Appeals err in affirming such findings and conclusions?

14. Did the District Court err in its judgments and sentences entered April 21, 1948, adjudging, ordering and decreeing that "the defendant John L. Lewis be, and he hereby is, ordered to pay a fine of $20,000," and that the Petitioner Union "be and it hereby is, ordered to pay a fine of $1,400,000"; and did the Court of Appeals err in affirming such judgments and sentences?

15. Did the Court of Appeals err, in its holdings in the contempt proceedings that neither the meaning of the 1947 Agreement, nor the right to strike, nor the so-called Taft-Hartley Act was involved and that such case concerned only the narrow question whether obedience was required to a temporary restraining order issued by a court which seeks to maintain conditions until it could determine its authority in the dispute?

16. Since the Court of Appeals did not affirmatively conclude that either Union or Lewis, as Union President, had caused the work stoppage, did it err in holding that they were under a legal duty to obey the temporary restraining order and to obey it instanter?

17. Did the Court of Appeals err (1) in upholding the judgment of conviction against the Union "because it did not exercise, or attempt to exercise, whatever powers it had to cause its members to resume work temporarily

pursuant to the court's order," and (2) in holding that Union disobeyed the trial court's order because it made no attempt to direct, instruct or persuade the miners to return to work, in the absence of finding that the work stoppage had been caused by the Union?

18. Did the Court of Appeals err in its conclusions, and is there any competent and substantial evidence to support its holdings (a) that the evidence shows conclusively that pending the settlement of that dispute Union and Lewis, as Union President, made no attempt to restore normal production, and (b) that they ignored the order until the basic dispute was settled?

19. Did the Court of Appeals err in its conclusion, and is there any competent and substantial evidence to support its holding, that the evidence is overwhelming that the walk-out was concerted?

20. Are the fines imposed on Petitioners, and each of them, excessive and are they repugnant to the Eighth Amendment to the Constitution of the United States and in conflict with prior decisions of this Court? Were they based upon any competent and substantial evidence in the record?

21. Was the dispute which occasioned the cessation of work by individual coal miners a "dispute" within the purview of Sections 206-210 of the Labor-Management Relations Act, 1947? Assuming that a "dispute" within said sections existed, had it been settled on April 21, 1948, when the District Court issued the preliminary injunction, thereby divesting the court of its jurisdiction and authority to issue the preliminary injunction?

22. Were the complaint and the exhibits and affidavits thereto attached sufficient, under Section 208 of the Act, to

invoke the jurisdiction of the District Court; and, if so, did they suffice to authorize the District Court to issue the temporary restraining order of April 3, 1948?

23. May civil and criminal contempts be tried simultaneously under a single Rule to Show Cause?

24. Did the Court of Appeals err in holding that the appeal in Case No. 9944 is moot and in dismissing the appeal in said case?

Reasons Relied On for the Allowance of the Writs

1. The questions presented stem from an action by Government with the initial averment in its complaint that "This is a suit under the Labor-Management Relations Act, 1947", instituted pursuant to the provisions of Section 208 of the Act, by which Congress has undertaken to vest jurisdiction in the United States District Court to enjoin a strike, or the continuing thereof, and "to make such other orders as may be appropriate" when such strike or continuation will imperil the national health or safety.

Petitioners challenged the validity of the Congressional enactment and asserted that it, the temporary restraining order and the preliminary injunction, complained of herein, effectuated intrusions upon and denial of rights secured by the First, Fifth and Thirteenth Amendments to the Constitution of the United States. The District Court declared that the restraining orders did not conflict with the Constitution, and both that Court and the Court of Appeals held that the trial court had jurisdiction of the subject matter. These determinations have decided federal questions of general importance and substance in a way probably in conflict with applicable decisions of this Court. In addition, the Court of Appeals held that, in the contempt proceeding, though the District Court had jurisdiction of

the subject matter, neither the 1947 Agreement, the right to strike nor the statutory provisions were involved. These determinations raise and involve federal questions of general importance and of substance relating to the construction and application of the Constitution which have not been, but should be, settled by this court.

2. In holding Petitioners (Case No. 9943) liable in the contempt proceedings, the Court of Appeals has required obedience *(in effect, obedience instanter)* to a restraining order issued by a court without jurisdiction, since jurisdiction is dependent upon a statute void because unconstitutional, and in such obedience it has required the performance of acts and conduct in violation of basic rights secured by the Constitution. The question whether the assumption of jurisdiction by a federal District Court to require obedience to an order commanding acts and conduct in violation of the federal Constitution is a plain usurpation of power whereby federal courts have accorded to themselves a position which transcends the Constitution itself, is of grave importance to every citizen of the United States, and one which has been decided in *Thomas* v. *Collins,* 323 U. S. 516, and kindred applicable cases, contrary to the decision of the Court of Appeals herein. If such cases are not applicable to the instant situation, then the question is a federal question of general and grave importance and one of substance relating to the construction and application of the Federal Constitution and one which has not been, but should be, settled by this Court.

3. The Court of Appeals has required obedience to a temporary restraining order without regard to the question of whether Petitioners were responsible for the situation which the temporary restraining order sought to correct. Thus, the Court of Appeals has decided a federal question

of general importance and one which is in conflict with the prior and applicable decisions of this Court in *United Mine Workers of America* v. *Coronado Coal Co.*, 259 U. S. 344, and *Coronado Coal Co.* v. *United Mine Workers of America*, 268 U. S. 295.

4. The decision of the Court of Appeals involves federal questions relating to the requirements of jurisdictional prerequisites under the national emergencies provisions of the Labor-Management Relations Act, 1947, which are of general importance and of substance which have not been, but should be, settled by this Court.

5. There is involved in the cases herein the question whether Congress has, under the national emergencies provisions of the Labor-Management Relations Act, 1947, vested federal District Courts with non-judicial powers in violation of Article III of the federal Constitution. This is a question of substance relating to the application of the Constitution which has not been, but should be, settled by this Court.

6. In affirming the fines imposed upon Union and Lewis by the District Court, the Court of Appeals' decision and judgment conflict with the Eighth Amendment to the federal Constitution, and misapplies and gives an improper effect to *United States* v. *United Mine Workers of America*, 330 U. S. 258.

7. The Court of Appeals has decided important federal questions of substance in conflict with principles enunciated in *Matter of Michael*, 326 U. S. 224, *Anderson* v. *Dunn*, 6 Wheat. (U.S.) 204, 5 L. Ed. 242, and other decisions of this Court.

8. This case involves interpretations and application of provisions of the Labor-Management Relations Act, 1947,

which are federal questions of substance and general importance which have not been, but should be, settled by this Court.

9. The judgments and sentences imposed upon the Union and John L. Lewis, affirmed by the judgment of the Court of Appeals, are without competent and substantial evidence to support them and are contrary to law.

10. In the injunction proceeding (Case No. 9944), the same constitutional questions were raised by Petitioners. The Court of Appeals dismissed the appeal (Case No. 9944) as moot. Since the statutory provisions are still effective, and since the validity of a temporary restraining order or an injunction order could not be determined within the eighty-day duration of an injunction permitted by said statutory provisions, such orders are "capable of repetition, yet evading review." The Court of Appeals' decision conflicts with this Court's decision in *Southern Pacific Terminal Co.* v. *Interstate Commerce Commission,* 219 U. S. 498, and that of said Court of Appeals of *Gay Union Corporation* v. *Wallace,* 112 F. (2d) 192, 71 App. D.C. 382 (1940), cert. denied 310 U. S. 647, as well as *Walling* v. *Haile Gold Mines,* 136 F. (2d) 102 (C.C.A. 4, 1943).

WHEREFORE, Your Petitioners International Union, United Mine Workers of America, and John L. Lewis, President, International Union, United Mine Workers of America (appellants in case No. 9943), and each of them, pray that writs of certiorari issue to the United States Court of Appeals for the District of Columbia Circuit, commanding said court to certify and send to this Court a full and complete transcript of the record and of the proceedings of said Court of Appeals had in the case numbered and entitled on its docket No. 9943, International Union, United Mine Workers of America, and John L. Lewis, as President,

International Union, United Mine Workers of America, Appellants, *v.* United States of America, Appellee, to the end that this case may be reviewed and determined by this court as provided by the statutes of the United States, and that the judgment of said Court of Appeals herein complained of, entered on June 6, 1949 (R. 554), be reversed and set aside and judgments entered for Petitioners by this Court, and that said Petitioners may have such further relief as to this Court may seem proper; and

WHEREFORE, Your Petitioners, International Union, United Mine Workers of America, and John L. Lewis, as President, International Union, United Mine Workers of America, and as Union Representative Trustee, Board of Trustees, United Mine Workers of America Welfare and Retirement Fund (appellants in Case No. 9944), and each of them, pray that writs of certiorari issue to the United States Court of Appeals for the District of Columbia Circuit, commanding said court to certify and send to this Court a full and complete transcript of the record and of the proceedings of said Court of Appeals had in the case numbered and entitled on its docket No. 9944, International Union, United Mine Workers of America, and John L. Lewis, as President, International Union, United Mine Workers of America, and as Union Representative Trustee, Board of Trustees, United Mine Workers of America Welfare and Retirement Fund, Appellants, *v.* United States of America, Appellee, to the end that this case may be reviewed and determined by this Court as provided by the statutes of the United States, and that the judgment of said Court of Appeals herein complained of, entered on June 6, 1949 (R. 555), be reversed and set aside and judgments entered for Petitioners by this Court, and that said Petitioners may have such further relief as to this Court may seem proper; and

WHEREFORE, Petitioners pray that this petition be granted.

Motion to Dispense With Printing of Certain Exhibits

Now come the Petitioners herein, and each of them, by their attorneys, and move the Court that for the purpose of this petition for writs of certiorari leave be granted them to dispense with the necessity of printing Government's exhibits Nos. 6, 14, 15, 18, 33A and 33B, and Exhibits 1, 2, 3 and 4 attached to and made a part of the affidavit of W. H. Young, and in lieu thereof that they be permitted to furnish to the Court ten (10) copies of said exhibits. In support of said motion, Petitioners say that the Court of Appeals by order dispensed with the necessity of printing said exhibits and permitted the filing of copies in lieu thereof (R. 541), and counsel for Government has expressed to counsel for Petitioners Government's acquiescence in this motion.

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Counsel for Petitioners.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 168

INTERNATIONAL UNION, UNITED MINE WORKERS OF AMERICA, AND JOHN L. LEWIS, AS PRESIDENT, INTERNATIONAL UNION, UNITED MINE WORKERS OF AMERICA,
Petitioners,

vs.

UNITED STATES OF AMERICA

No. 169

INTERNATIONAL UNION, UNITED MINE WORKERS OF AMERICA, AND JOHN L. LEWIS, AS PRESIDENT, INTERNATIONAL UNION, UNITED MINE WORKERS OF AMERICA, AND AS UNION REPRESENTATIVE TRUSTEE, BOARD OF TRUSTEES, UNITED MINE WORKERS OF AMERICA WELFARE AND RETIREMENT FUND,
Petitioners,

vs.

UNITED STATES OF AMERICA

BRIEF IN SUPPORT OF PETITION FOR WRITS OF CERTIORARI

Note

The term "petitioners" used herein refers to International Union, United Mine Workers of America (herein called "Union"), and John L. Lewis, as President, International Union, United Mine Workers of

America, in Appeal No. 9943, and International Union, United Mine Workers of America (herein called "Union"), and John L. Lewis, as President, International Union, United Mine Workers of America, and as Union Representative Trustee, Board of Trustees, United Mine Workers of America Welfare and Retirement Fund, in Appeal No. 9944.

The other terms, such as "Act," "Government," "1947 Agreement," "Fund" are used as they were in the Petition for Writs of Certiorari, to which reference is made.

A

Opinion of the Court Below

The opinion in the United States Court of Appeals for the District of Columbia appears at page 544 of the Record. It is not yet reported.

B

Jurisdiction

The judgment to be reviewed in Case No. 9943 is dated June 6, 1949. The judgment to be reviewed in Case No. 9944 bears the same date.

The statutory provisions to sustain the jurisdiction of this Court are Title 28, U. S. C. Secs. 1254, 2101, (Act of June 25, 1948, chap. 646, Pub. Law 773, 62 Stat.); Section 208 (c) Labor Management Relations Act, 1947, 29 U. S. C. A. 178(c), Act of June 23, 1947, chap. 120, Title II, Sec. 208, 61 Stat. 155; and Rule 37 (b) (2), Federal Rules of Criminal Procedure, as amended.

C

Statement of the Case

A general statement of the case appears in the preceding Petition for Writs of Certiorari, which is hereby adopted and made a part of this brief.

D

Specifications of Errors

1. The Court of Appeals erred in holding that the District Court had jurisdiction to issue the temporary restraining order of April 3, 1948, and that the order was one within the District Court's general powers.

2. The Court of Appeals erred in failing to hold that Section 208 of the Labor Management Relations Act, 1947, the restraining order, and the preliminary injunction were void because each of them conflicted with the First, Fifth and Thirteenth Amendments to the Constitution of the United States and Article III of said Constitution.

3. The Court of Appeals erred in failing to hold that the District Court was without jurisdiction and power to issue either the temporary restraining order of April 3, 1948, the preliminary injunction of April 21, 1948, and the Rule to Show Cause, as well as to impose the judgments and sentences upon the Union and upon Lewis.

4. The Court of Appeals erred in holding that the contempt proceeding did not concern the meaning of the 1947 Agreement between the "miners and the operators, or the right to strike, or the so-called Taft-Hartley Act." It erred in holding that the contempt proceedings concerned only the question whether obedience is required to a temporary order issued by a court which seeks to maintain conditions until that court can determine its authority in the dispute.

5. The Court of Appeals erred in its holding that "an order issued by a court with jurisdiction over the subject matter and the persons, in a case within its general powers, must be obeyed until reversed by orderly and proper proceedings" without qualification that such order must not

conflict with rights secured by the Constitution of the United States.

6. The Court of Appeals erred in its opinion that "Many of the points made by the Union and Lewis were decided, in March of 1947, by the Supreme Court in *United States* v. *Mine Workers,*" 330 U. S. 258, and that the question arising herein concerning contempt was before the Supreme Court in the prior case.

7. The Court of Appeals erred in its opinion that the evidence shows conclusively that pending the settlement of the dispute, Union and Lewis made no attempt to restore normal production, and that they ignored the order until the basic dispute was settled. This holding is without factual evidential support and is not supported by any competent and substantial evidence, and is contrary to the evidence and to law.

8. The Court of Appeals erred in its holding that Union and Lewis disobeyed the court's order, which is not supported by any competent and substantial evidence but is contrary thereto and to law.

9. The Court of Appeals erred in its opinion that it could not say that there was necessarily a reasonable doubt that Union and Lewis had wilfully, wrongfully and deliberately disobeyed the order of April 3, 1948, or that the findings of fact were not supported by substantial evidence. It erred in refusing to reverse and set aside the District Court's findings of fact and conclusions of law that beyond a reasonable doubt the Union and Lewis, after service upon them of the restraining order, wilfully, wrongfully, and deliberately disobeyed and violated that order, since such findings and conclusions were without competent and substantial evidence to support them and are contrary to law.

10. The Court of Appeals erred as a matter of law in its holdings that Union and Lewis were under an instanter duty to direct, instruct or persuade the miners to return to work.

11. The Court of Appeals erred in affirming the judgments and sentences imposed upon Union and Lewis by the District Court. The findings of fact upon which such judgments and sentences are premised are without any competent and substantial evidence to support them and are contrary to the evidence in the record, and the conclusions of law relating to said judgments and sentences, both of the trial court and of the Court of Appeals, are contrary to law.

12. The Court of Appeals erred in affirming, and in refusing to set aside, the judgments and sentences imposed upon Union and Lewis by the District Court.

13. The Court of Appeals erred in its opinion that the fines imposed upon Union and Lewis were not excessive. The fines imposed were without any competent and substantial evidence to support them and are contrary to the evidence, and to law, and their imposition constituted an abuse of discretion, as well as a violation of the Eighth Amendment to the Constitution of the United States.

14. The Court of Appeals erred in failing to find and hold the District Court's findings of fact and conclusions of law that—

(a) The letter of March 12 was written and sent with the express purpose of ordering, calling, and causing a strike on the part of the Union against the operators and associations signatory to the 1947 Agreement.

(b) The effect of the transmittal of the letter was to cause the said strike.

(c) During the period between March 15 and March 18, members of Union, acting in concert walked out from their employment at bituminous coal mines

throughout the United States owned or operated by operators and associations signatory to the said Agreement. By the latter date, a strike affecting a substantial part of the bituminous coal industry of the United States was in progress and was being carried on by the said Union against the said operators and associations.

(d) The walk-out did not constitute the exercise of the right of individual employees to quit their labor, as set forth in Section 502 of the Act, but was a strike on the part of the Union.

(e) The walk-out on the part of the Union was a strike as defined in Section 501 (2) of the Act.

(f) The strike, if permitted to continue, will imperil the national health and safety within the meaning of the Act.

(g) The strike has caused irreparable injury to the United States and to the industry and economy of the United States.

(h) On April 21, 1948, "the strike on the part of the Union * * * has continued and is in progress on this date, and the said labor dispute continues unresolved."

were not supported by competent and substantial evidence and are contrary to the evidence and to law.

15. The Court of Appeals erred in failing and refusing to hold that the dispute was not one within the purview of Sections 206-210 of the Labor Management Relations Act of 1947.

16. The Court of Appeals erred in failing and refusing to hold that the District Court did not have jurisdiction of the subject matter because jurisdictional prerequisites were lacking and because the complaint and exhibits attached thereto were not sufficient to invoke the court's jurisdiction.

17. The Court of Appeals erred in holding that the Rule to Show Cause was not issued in violation of Rule 42 (b), Federal Rules of Criminal Procedure.

18. The Court of Appeals erred in failing to reverse the ruling of the District Court that the Union is responsible for the mass action of its members.

19. The Court of Appeals erred in its conclusion which is without competent and substantial evidentiary support, that the walk-out was concerted.

20. The Court of Appeals erred in failing to hold that the District Court erred in holding that the provisions of Sections 206 to 208 of the Act, and all requirements therein, were duly and legally carried out both prior to and in the institution of this action.

21. The Court of Appeals erred in dismissing the appeal in Case No. 9944 as moot.

E

Argument

I

(a) THE CONTEMPT PROCEEDINGS INVOLVED THE MEANING OF THE 1947 AGREEMENT, THE RIGHT TO STRIKE AND THE SO-CALLED TAFT-HARTLEY ACT.

(b) THE STATUTE VESTING JURISDICTION AND THE RESTRAINING ORDERS THEREUNDER ARE VOID BECAUSE THEY ARE REPUGNANT TO THE CONSTITUTION OF THE UNITED STATES.

In its complaint for injunctive relief, Government's initial averment is that "This is a suit under the Labor Managements Relations Act, 1947" and "pursuant to the provisions of Section 208 of the Act . . . is brought to enjoin the existence of a strike." There was no involvement of

illegality of means or of object of alleged strike, so as to invoke the general powers of a court of equity. If jurisdiction existed at all, it existed only by virtue of Section 208 of the Act. Prior to enactment of what the Court of Appeals refers to as the "so-called Taft-Hartley Act," had Government undertaken to institute an injunction proceeding, the Norris-LaGuardia Act (29 U. S. C. A. 101 et seq.) would have been applicable and would have precluded jurisdiction of the federal district court. Only because Section 208 of the "so-called Taft-Hartley Act" renders the Norris-LaGuardia Act inapplicable to situations where the national health or safety is allegedly imperiled, is Government able to assert its standing in a federal district court. The very thing which Government seeks in its action is the essence of the jurisdiction which Congress has undertaken in Section 208 of the Labor Management Relations Act to vest in federal trial courts, namely, the enjoining of an alleged strike. The statute purports to say to federal district courts: you have the right to enjoin a threatened or actual strike or the continuation thereof. The restraining order was wholly responsive to that attempted vesting of jurisdiction and power. The essence of the situation is simply this: Congress undertook to deprive American citizens of rights constitutionally guaranteed by vesting district courts with jurisdiction to enjoin strikes and to make other orders as it deemed appropriate; a willing federal district court, acting under such purported power, sought to effect such deprivation; that same court was willing to impose criminal sanctions because allegedly petitioners disobeyed an order under and consonant with such purported power which petitioners asserted was beyond the constitutional authority of Congress to give and beyond the constitutional power of federal district courts to exercise and enforce.

The 1947 Agreement specifically provided against a "no strike" policy and required coal miners to work when they are "willing and able." The order involved in the contempt proceedings, issued without hearing and notice, ignored this contractual provision. Petitioners believe that this suffices to demonstrate clearly and definitely that the contempt proceedings did involve the right to strike and the so-called Taft-Hartley Act, and the meaning of the 1947 Agreement, and that the Court of Appeals erred in its opinion that the contempt proceedings did not concern them.

That Section 208 of the Act and the restraining orders of April 3 and 21 do conflict with the First, Fifth and Thirteenth Amendments to the Federal Constitution and with Article III of said Constitution, by reason whereof the District Court was without jurisdiction to issue said orders and the Rule to Show Cause, as well as to impose the judgments and sentences as and for criminal contempt against Union and Lewis, is clear from the following discussion.

1. *The Thirteenth Amendment*

For more than half a century, the right of American workmen to strike, absent illegality of means and object, has had the approbation of the federal judiciary.[1]

In *American Steel Foundries* v. *Tri-City Central Trade Council*, 257 U.S. 184, Mr. Chief Justice Taft said:

> "The strike became a lawful instrument in a lawful economic struggle or competition between employer and employees as to the share or division between them of the joint product of labor and capital."

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[1] *Arthur* v. *Oakes*, 63 F. 310; *Hopkins et al.* v. *Oxley Stave Co.*, 83 F. 912 (C.C.A. 8, 1897); *Delaware, L. & W. R. Co.* v. *Switchmen's Union of North America et al.*, 158 F. 541. See also, *Hotel Employees Alliance* v. *Greenwood*, 30 So. (2) 696 (Ala., 1947).

The right to strike has been accorded whether done "singly or in concert."[2] Freedom to quit and refuse to undertake work may as readily be exercised through a group organization as individually. *Carpenters' Union* v. *Citizens Committee,* 333 Ill. 225, 164 N. E. 393, 1928).

Prior to the Act's adoption, mere concert of action, in and of itself, was not sufficient to render the act of striking illegal.[3] Nor do the statutory provisions upon which Government's action herein is based declare that a strike enjoinable thereunder is unlawful.[4] Indeed, it would be an anomaly to say that conduct admittedly illicit one day, would be licit the next day. In the vesting of power in federal district courts to enjoin, for a limited period of time, employees from quitting their employment, Congress has authorized the judicial process to restrain American workmen in the exercise of *lawful* conduct heretofore characterized as "fundamental human liberties",[5] and "the exercise of the unquestioned right to quit work".[6] Thus, issuance of an injunction is no longer "conditioned by the substantive law that determines legitimacy of challenged behavior."[7] Legality or illegality of purpose of the strike,

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[2] *Delaware, L. & W. R. Co.* v. *Switchmen's Union of North America,* supra; *Wilson & Co.* v. *N.L.R.B.,* 120 F. 2d 913 (C.C.A. 7, 1941); *Lindsay & Co.* v. *Montana Fed. of Labor,* 37 Mont. 264, 96 P. 127, wherein it is found: ". . . the mere combination of action is not an element which gives character to the act."

[3] *Hall* v. *Johnson,* 87 Ore. 21, 169 P. 515; *Bayonne Textile Corp.* v. *American Federation of Silk Workers,* 116 N.J. Eq. 146, 172 A. 551; *Longshore Printing Co.* v. *Howell,* 26 Ore. 527, 38 P. 547; *Beck* v. *Teamsters Protective Union,* 118 Mich. 497.

[4] It is to be noted that secondary boycott and other combinations are declared to be "unlawful" under Section 303 of the Act.

[5] *Stapleton* v. *Mitchell,* 60 F. Sup. 51. *Traffic Telephone Workers Federation of N. J. et al.* v. *Driscoll,* 71 F. Sup. 681 (D. C., D. N. J., 1947).

[6] *N.L.R.B.* v. *Fansteel Metallurgical Corp.,* 306 U. S. 240, 256: "But this recognition of 'the right to strike' plainly contemplates a lawful strike —the exercise of the unquestioned right to quit work".

[7] Frankfurter & Greene, The Labor Injunction, p. 134.

or the means of pursuing it, no longer constitutes the juridical test for issuance of the injunctive process in a labor dispute. Instead, an inexorable employer is allowed to be the key to deprive workmen of their right to stop work. The concomitant result of the restraint is coercive servitude; and during the processes of collective bargaining, "a fundamental right",[8] from which the right to strike may not be disassociated,[9] employees are chained to their employment for the period of restraint prescribed by the statute. Such result clearly falls within the proscription of the Thirteenth Amendment to the Constitution of the United States and prior judicial determinations.

Bailey v. *Alabama*, 219 U.S. 219, holds that:

> "The words involuntary servitude have a 'larger meaning than slavery' . . . The plain intention of the (Thirteenth Amendment) was to abolish slavery of whatever name and form and all its badges and incidents; . . . to make labor free, by prohibiting that control by which the personal service of one man is disposed of or coerced for another's benefit which is the essence of involuntary servitude."

In *Stapleton* v. *Mitchell, supra,* at page 61, there appears:

> "The right to peaceably strike or to participate in one, to work or to refuse to work, and to choose the terms and conditions under which one will work, like the right to make a speech, are fundamental human liberties which the state may not condition or abridge in the absence of great and immediate danger to the community."

See also *Henderson* v. *Coleman*, 7 So. (2d) 117 (Fla.); *Carpenters Union* v. *Citizens Committee, supra; Alabama*

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[8] *N.L.R.B.* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1.

[9] *Int. Union of United, etc. Workers of America* v. *McNally*, 22 LRRM 2391 (Mich. Cir. Ct., Aug. 3, 1948).

State Federation of Labor v. *McAdory*, 246 Ala. 1, 18 So. (2d) 810.

Of significance to the question herein considered is the language of the United States Supreme Court in *Pollock* v. *Williams*, 322 U. S. 4, 17:

> "The undoubted aim of the Thirteenth Amendment . . . was not merely to end slavery but to maintain a system of completely free and voluntary labor throughout the United States . . . This congressional policy means that no state can make the quitting of work any component of a crime, or make criminal sanctions available for holding unwilling persons to labor. *The Federal statutory test is a practical inquiry into the utilization of an act as well as its mere form and terms.*" (Italics supplied.)

Clearly, under the language quoted above, had Congress imposed either fine or imprisonment, or both, as a means to prevent a strike for the period of restraint found in the statute under consideration, such legislation would fall within the ambit of enactments prohibited by the principle enunciated in the *Pollock* case; but the criminal sanctions are as available to Government under the provisions herein challenged as if Congress had specifically expressed them in the statute itself. By empowering the federal district courts to issue labor injunctions, Congress provided the well-known and vicious pattern of "Government by injunction" which led to the adoption of the Norris-LaGuardia Injunction Act "to the effect that federal judges should no longer be trusted with their equity power in dealing with labor disputes."[10] The labor injunction is, in effect, the enactment "of a penal code by a judge who thereupon proceeds to determine the defendant's guilt, and to punish him

[10] Gregory, Government by Injunction Again, 14 Univ. of Chicago Law Review 363; The Labor Management Relations Act and the Revival of the Labor Injunction, 48 Col. Law Rev. 759; Frankfurter & Greene, The Labor Injunction, Ch. 5.

for the crime under the guise of contempt proceedings."[11] Speaking for the Supreme Court of California, Justice Carter in *In re Blaney*, 184 P. (2) 892 (Cal. 1947), realistically stated:

> "While the instant statute does not directly impose criminal penalties, it does provide for injunctive relief in the event of its violation and the penalty for disobeying an injunction is contempt of court. It is a coercive measure. . . ."

In an opinion wherein the Supreme Court stated that "The question requiring decision is not, however, the broad one whether the legislature has power to prohibit strikes", it stated also that the right to strike is not absolute.[12] Intrusion of the right to strike, however, must be tested in the distinction between "dealing with the abuse" and curtailment of the right itself. In *De Jonge* v. *Oregon*, 299 U. S. 353, the opinion reads in part:

> ". . . legislative intervention of basic and fundamental principles of liberty can find constitutional justification only by dealing with the abuse. *The rights themselves must not be curtailed.*" (Italics supplied.)

In *Cantwell* v. *Connecticut*, 310 U. S. 296, 304, the Court stated:

> "In every case the power to regulate must be so exercised as not, in attaining a permissible end, unduly to infringe the protected freedom."

See also the statement by Circuit Judge Huxman in the dissenting opinion in *Stapleton* v. *Mitchell, supra*, page 64, that

> *"The state may not require anything as a condition precedent to the exercise of the right to strike.*

[11] Teller, Labor Disputes and Collective Bargaining, Vol. 1, p. 70.

[12] *Dorchy* v. *Kansas*, 272 U. S. 306, 311.

It may, by appropriate legislation, regulate the manner in which a strike is carried on. The distinction is between the right to speak and the way in which the right is exercised." (Italics supplied)

The statutory provisions under review afford complete negation of the right to strike for a period of eighty days. To say that such denial is a mere regulation of the right to strike is "to transmute vital constitutional liberties into doctrinaire dogma." Unlike the situation in *Carpenters and Joiners Union of America* v. *Ritter's Cafe*, 315 U. S. 722, wherein the Supreme Court of the United States restricted the area of picketing, saying the restriction "leaves open to the disputants other traditional modes of communication", the restraints inherent in the statute being reviewed afford *no means* of enjoyment of the right to strike. In the *Ritter* case, enjoyment of the basic right was not denied; only the mode of enjoyment was restricted. If enjoyment of the right is *denied* for an eighty-day period, then such right is not constant but intermittent and temporary. If Congress may, by legislative fiat, dissipate the right to strike, then such right is not "sacred or inherent but (is) the result of pressures and forces and are therefore transient and amendable and only temporarily embodied in our fundamental law."[13] "Here the restriction in practical effect is prohibition, not regulation."[14] Congress has dealt, not with abuses or the manner in which a strike might be effected, but rather with the exercise of the right. Clearly and without equivocation, it has enacted

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[13] See McKinnon, Human Rights and National Unity, 33 Am. Bar Journal 544, 546.

[14] Concurring opinion of Mr. Justice Rutledge, in which Mr. Justice Black, Mr. Justice Douglas and Mr. Justice Murphy joined, in *U. S.* v. *CIO*, 335 U. S. 106, 129, 146.

Legislation which is violative of juridical proscription: "The rights themselves must not be curtailed." [15]

Nor does Section 502 of the Act, which precludes any court from compelling the performance of labor by an individual employee without his consent, free the statutory provisions under review of the suppression of liberty guaranteed by the Thirteenth Amendment. As stated in *State ex rel. Dairy Land Power Cooperative* v. *Wisconsin Employment Relations Board*, 21 L.R.R.M. 2508, 2514 (Wisc. Cir. Court, March 15, 1948):

> "You cannot convert into a criminal conspiracy the voluntary decision of two or more men to exercise a constitutional right."

Judicial approval of this congressional attempt to vest in federal district courts the means by which to prevent American laborers from exercising their right to cease production peacefully and for a lawful purpose would be invitatory to further encroachment upon, and ultimate and complete denial of, the right to strike. It is stated thus in *Thomas* v. *Collins*, 323 U. S. 516, 543:

> ". . . If the restraint were smaller than it is, it is from petty tyrannies that large ones take root and grow. This fact can be no more plain than when they are imposed on the most basic rights of all. Seedlings planted in that soil grow great and, growing, break down the foundations of liberty."

Under the restraining orders [16] the Union and "its officers,

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[16] Applicable orders are (1) the ex parte temporary restraining order issued April 3, 1948, and (2) the preliminary injunction issued April 21, 1948.

[15] *DeJonge* v. *Oregon*, supra; *American Federation of Labor* v. *Reilly*, 155 P. 2d 145 (Colo., 1944), 160 A.L.R. 873.

agents, servants and employees, and all persons in active concert or participation with them'' were restrained

(1) ''from in any manner engaging in, permitting or encouraging the said strike or its continuation''; and

(2) ''from encouraging, causing or engaging in a strike . . . or from in any manner interfering with or affecting the orderly continuance of work.''

A third restraint [17] ordered that the Union, acting through its President and other appropriate officers, agents, servants and employees ''forthwith instruct all members of said Union employed in the bituminous coal mines . . . to cease the said strike and immediately to return to their employment'', as well as that they ''cease, desist and refrain from ordering, encouraging, recommending, instructing or in any wise permitting the said strike to continue''.

The purpose of the orders, as the trial court declared was ''that the miners go back to work''. The District Court stated also that if the national health and safety were imperiled, the miners ''would have to go back to the mines.'' (R. 361.) Nor did the Court concern itself with the provisions of the agreement of 1947, specifically providing that the ''no strike'' clause, which had been included in prior contracts between Union and coal operators, was cancelled, or the clause therein that the Agreement shall cover the employment of persons employed in the bituminous coal mines covered by the agreement ''during such time as such persons *are able and willing to work.*''. (Italics supplied.) Observations hereinbefore made regarding involuntary

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[17] The order contained other restraints mentioned in the Petition for writs of certiorari, at pages 6-8.

servitude are equally applicable to the restraining orders complained of, which conclusively show the utilization of the statutory power to enjoin strikes and to force laborers to work without their consent and against their will. The objection of involuntary servitude was summarily dismissed with the trial Court's statement that "nor has it ever been held, insofar as the Thirteenth Amendment is concerned, that an injunction preventing a strike constituted involuntary servitude, or an injunction which ordered a strike to cease involved involuntary servitude;" (R. 364) but the court, in its eagerness to place coal miners in coercive servitude, failed to consider that heretofore labor injunctions were concerned with restraints of proscribed and unlawful conduct.[18] Equity has refrained from ordering unwilling employees to work;[19] yet the court's mandatory decree that the Union instruct its members to cease the strike and immediately return to their work sought to accomplish such an illegal result. Violation of the miner's right to stop work and freedom from involuntary servitude is explicit in the court's order. Since the court itself may not legally commit the miners to involuntary servitude, it may not legally effectuate such result through an invalid mandate that the Union accomplish such status for its members. Here the court seeks to accomplish indirectly what the fundamental law forbids it to do directly. This it may not do. *Frost*

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[18] "It is true that there was a time when the courts of England held that an agreement of workmen to quit in a body for the purpose of securing better wages or improved conditions for labor, was a criminal conspiracy at common law, but this attitude may well be considered to have been a survival of the spirit which existed when Gurth, the Saxon swine-heard, wore an iron collar riveted about his neck. • • •" *Hall* v. *Johnson*, 87 Oregon 21, 30.

[19] *Birmingham Trust & Sav. Co.* v. *Atlanta*, 271 Fed. 743; *Arthur* v. *Oakes*, supra; 49 Am. Jur. Subject; Specific Performance, 134 et seq. 135 A.L.R. 290,

v. *Railroad Commission*, 271 U. S. 583, 593.[20] Here the trial Court demanded that the Union accomplish for the Court an unconstitutional result. This attempt, by use of the injunctive process to force the Union to perform an act designed to accomplish an illegal act is repugnant to the Thirteenth Amendment of the Constitution of the United States and beyond the scope of judicial power.

Nor may the statutory provisions herein challenged be held constitutionally justifiable as a regulation necessitated by an alleged imperilment of national health and safety. Emergencies do not create power to legislate. They merely occasion the right to use existing power. (*Stapleton* v. *Mitchell, supra,* dissenting opinion, p. 63.) Where, as in the challenged statute, the issue is between conflicting individual liberty and the interest of society, the inquiry is "whether the statute under review violates the essential attributes of that liberty." *Near* v. *Minnesota, ex rel., Olson,* 283 U. S. 697.

The presumption of constitutionality generally accorded congressional enactments does not obtain where the statutory restraints imposed are upon liberties guaranteed by the Federal Constitution. The "preferred place given in our scheme to the great, the indispensable democratic freedoms • • • gives these liberties a sanctity and a sanction not permitting dubious intrusions." *Thomas* v. *Collins,* 323 U. S. 516, 530.

2. *The First Amendment*

Under Section 208 (a) (ii), federal courts are authorized, in addition to enjoining a strike or the continuing

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[20] "In approaching cases • • • in which Federal Constitutional rights are asserted, it is incumbent • • • to inquire not merely whether those rights have been denied in express terms, but also whether they have been denied in substance and effect." *Oyama* v. *California,* 332 U.S. 633, 636.

thereof, "to make such other orders as may be appropriate." Under such authority, the trial court restrained the Union and all persons in active concert or participation with it,

> (1) from engaging in, permitting or encouraging the said strike or its continuation;
>
> (2) from encouraging, causing or engaging in a strike, or from in any manner interfering with or affecting the orderly continuance of work at the coal mines;

and in addition, the Union was restrained from ordering, encouraging, recommending, instructing, inducing or in any wise permitting the said strike to continue.

Though the statute does not, in specific terms and on its face, authorize suppressions of freedoms enumerated in the First Amendment to the Federal Constitution, in passing upon constitutional questions, "the statute must be tested by its operation and effect." *Near* v. *Minnesota,* 283 U. S. 697.

The right of free speech and the right to picket are so enmeshed with the right to strike that to "abridge either when of lawful object and lawfully executed could not be sustained." *Hotel Employees Alliance* v. *Greenwood, supra.*

The right to address a union meeting to persuade members by speech, or otherwise, peaceably to cease work, either singly or in concert, regardless of the reason, was denied to the Union and its members and others acting in concert with it. The Union could not, through printed word, induce an individual miner or miners to exercise his right to cease employment. Freedom of assembly for discussion of matters concerning collective bargaining was, by the restraining order, denied. Whatever course of action the employers of coal miners might take during the period of the restraints, no Union official, agent, employee

or member could persuade coal miners, either singly or in plural numbers, to cease production in protest against such employer conduct. The right of an individual to leave his employment includes the right to induce others to do so and to indicate to others their joint action. "But even if the right to sway others by persuasion is assumed to be subject to some curtailment, in the interest of preventing grossly unbalanced presentations, that right cannot be wholly denied. * * * Here the restriction, in practical effect is prohibition, not regulation. * * *" Concurring opinion of Mr. Justice Rutledge in *U. S.* v. *C.I.O., supra.*

In *Carlson* v. *California*, 310 U. S. 106, 84 L. Ed. 1104, 1108, the Supreme Court held that:

> "For the reasons set forth in our opinion in Thornhill *v.* Alabama, supra, publicizing the facts of a labor dispute in a peaceful way through appropriate means, whether by pamphlet, by word of mouth or by banner, must now be regarded as within that liberty of communication which is secured to every person by the Fourteenth Amendment against abridgment by a state."

The same prohibition applies to Congress under the First Amendment and to court decrees. *American Federation of Labor* v. *Swing*, 312 U. S. 321, 85 L. Ed. 855.

The purpose of the statute being to compel laborers to serve their employers involuntarily under threat of injunction and contempt proceedings, the authorization given to federal district courts to "make such orders as may be appropriate" permissibly effectuates restraints upon all freedoms correlative to the right to strike. Because thereof, the statute and the restraining orders made thereunder are in conflict with the First Amendment.

Prior to enactment of the national emergency provisions of the Labor-Management Relations Act of 1947, curtailment of constitutional rights had judicial approval only under circumstances of such a nature as to create a *clear* and *present* danger. In *Schenck* v. *United States,* 249 U. S. 47, 52, 63 L. Ed. 470, 473, the court said:

> "The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent."

Reiteration of that rule is found in *Thornhill* v. *Alabama,* 310 U. S. 88, and in *Bridges* v. *California,* 314 U. S. 252, wherein Mr. Justice Black, speaking for the Court, said that if judgments curtailing constitutional rights "can be justified at all, it must be in terms of some serious substantive evil which they are designed to avert".

Since curtailment of basic rights is inherent in the national emergency provisions of the Act, the juridical test of "clear and present danger" is necessarily made applicable to these statutory provisions. *Schneider* v. *Irvington,* 308 U. S. 147, 161, 84 L. Ed. 155, wherein it is said:

> "* * * Mere legislative preferences or beliefs respecting matters of public convenience may well support regulation directed at other personal activities, but be insufficient to justify such as diminishes the exercise of rights so vital to the maintenance of democratic institutions. * * *"

And, in the *Bridges* case, *supra,* the Court emphasized that

> "* * * the *likelihood,* however great, that a substantive evil will result *cannot alone justify a restriction upon freedom of speech.* * * * The evil itself must

be 'substantial' * * * it must be 'serious,' * * *" (Italics supplied).

If, during the eighty-day period of the statute, there exists a clear and present danger which justifies the issuance of an injunction denying labor the right to strike, what becomes of the clear and present danger on the eighty-first day, when there is no such statutory denial?

3. *The Fifth Amendment*

The right to bargain collectively has been judicially recognized as a fundamental right. (*N.L.R.B.* v. *Jones & Laughlin Steel Corp., supra*), and the right to bargain collectively, both as a right of liberty and property, is conceded to be within the protection of the Fifth Amendment of the Federal Constitution. (11 Am. Jur., Subject Constitutional Law, Sections 339, 341). Necessarily the right of collective bargaining embodies the right to quit collectively, for it is this right of employees to withhold their services from an employer which gives equality to the bargaining process so far as employees are concerned. As stated in *Automobile Workers* v. *McNally, supra,* "It is impossible to dissociate the strike from the process of collective bargaining." Denied utilization of this economic power, free collective bargaining is thus reduced to a mockery, and thereby the collective group is placed precisely in the position of an individual, of whom Chief Justice Taft said:

> "A single employee was helpless in dealing with an employer * * * Union was essential to give laborers opportunity to deal on equality with their employer. They united to exert influence upon him and *to leave him in a body in order by this inconvenience to induce him to make better terms with them.*" (Italics supplied).

American Steel Foundries v. *Tri-City Central Trade Council, supra.*

In *Wolff Packing Co.* v. *Court of Industrial Relations,* 262 U. S. 522, the Court considered the Industrial Court Act, enacted by the Legislature of Kansas, which, according to the opinion, permitted a laborer dissatisfied with his wages to quit "but he may not agree with his fellows to quit or combine with others to induce them to quit." Condemning such legislative enactment, the Court said (p. 534):

> "These qualifications do not change the essence of the Act. It curtails the right * * * of the employee * * * to contract about his affairs. This is part of the liberty of the individual protected by the guarantee of the due process clause. * * *"

See also *Dorchy* v. *Kansas,* 264 U. S. 286, 289, wherein the Court, referring to the *Wolff Packing Company* case, observed:

> "For the reasons there set forth, it is unconstitutional, also, as applied to the coal mines of that State."

In *United States* v. *Petrillo,* 68 F. Supp. 845 (N.D. Ill. 1946), reversed for other reasons (332 U. S. 1), the Court said:

> "* * * The guarantee of freedom to withdraw from employment * * * is found in the specific guarantee of the Fifth and Thirteenth Amendments."

Petitioners submit that the statutory provisions herein complained of are arbitrary and unreasonable.

The "cooling-off period", which the 80-day period is frequently called, does not absolve the statute of being arbitrary and unreasonable. President Truman's message vetoing H. R. 3020, 93 Cong. Rec. 7485, 7487, criticized the

statute "for making the basic assumption that strikes are always called as the result of 'inflamed passion' and that 'union leaders do not represent the wishes of the workers.' " See Note, *The Labor Management Relations Act and the Revival of the Labor Injunction,* 48 Columbia Law Review 759, 771. The recent first annual report to Congress of the Federal Mediation and Conciliation Service states, in part:

> "One of the conclusions which the service is undoubtedly justified in drawing from its experience of the last year is that provision for an 80-day period of continued operations, under injunctive order of a court, tends to delay rather than facilitate settlement of a dispute. * * *"

See 23 Labor Relations Reporter, 170, 172, wherein there is a characterization of the "last-offer" ballot as a "disrupting influence in collective bargaining and mediation."

The Agreement of 1947 specifically provided that the "no strike" clause which had been contained in agreements between Union and coal operators prior to the 1947 Agreement was "hereby rescinded, cancelled, abrogated and made null and void." It provided too that the Agreement "shall cover the employment of persons employed in the bituminous coal mines covered by this Agreement during such times as such persons are able and willing to work." The restraining orders, contravening the due process clause of the Federal Constitution, deprived the Union and the coal miners of these contractual rights. When it is considered that the statutory provisions provide for temporary injunctive relief only, the argument usually advanced that injunctive proceedings must be tested for due process at the conclusion thereof rather than at their inception falls, *for the time element involved under the statute never permits of final determination that is effec-*

tive in the protection of contractual and other constitutional rights, and particularly so in the instant case.

Such contractual rights were summarily destroyed and rendered wholly nugatory without notice and without hearing. In addition, fundamental rights were violated through improper use of the ex parte restraining order. The ex parte temporary restraining order exceeded the proper function of such a writ. In 28 Am. Jur. Subject Injunctions, Section 21, it is said:

> "Indeed, mandatory injunctions are rarely granted before final hearing or before the parties have full opportunity to present all the facts in such manner as will enable the court to see and judge what the truth may be."

In *O'Malley* v. *Chrysler Corporation,* 160 F. 2d 35, 36, (1947) the Court stated:

> "We start with the proposition that mandatory injunctions are rarely issued and interlocutory mandatory injunctions are even more rarely issued, and neither except upon the clearest equitable grounds. 43 C. J. S., Injunctions, Sec. 5, pp. 410, 411, 412; 28 Am. Jur. Injunctions, Sec. 20; High on Injunctions (3rd Ed.), Sec. 2."

The statutory provisions likewise are violative of the due process clause, because they are vague and uncertain. While the Court is vested with authority to enjoin strikes, or the continuation thereof, which will imperil the national health or safety, Congress has not provided any standards or guides by which it may be determined when and under what circumstances national health and safety will be imperiled. Since the statute undertakes to deny the exercise of fundamental rights protected by the First, Fifth, and Thirteenth Amendments, it is essential that employees and their collective bargaining agents know at the time

they exercise rights under the basic law whether their conduct is inconsistent with law.

> "Men of common intelligence cannot be required to guess at the meaning of the enactment."

Winters v. *New York,* 333 U. S. 507, 515; *Connally* v. *General Construction Co.* 269 U. S. 385; *United States* v. *Petrillo,* 332 U. S. 1. Under the statutory provisions under review, standards of conduct are postponed until judicial pronouncement declares that national health and safety will be imperiled. Then, for the first time is there knowledge that past conduct in the exercise of fundamental rights is proscribed.

Pronouncement by the trial court of its doctrine of Union responsibility for mass member action was accomplished by its statement that it was a novel doctrine (R. 365). Thus petitioners found themselves responsible and subjected to criminal sanctions for alleged violation of a judge-made law first declared when sentence was imposed. If petitioners were to be tried for a criminal offense, basis therefor should have been established law.

4. *The Statute Vests the Federal Courts with the Exercise of Nonjudicial Powers and is Therefore Void under Article III of the Federal Constitution.*

The statutory provisions empowering district courts to enjoin strikes or the continuation thereof which will imperil the national health or safety is likewise void because it vests the court with nonjudicial functions. Declaration of national emergencies, such as will constitute imperiling of national health or safety, is made the exclusive province of district courts, but "The right to determine what is a public use and when there is a public necessity • • •

is, in the first instance, a 'legislative question' rather than a 'judicial question' ". *Carmack* v. *U. S.* 135, F. 2d 197 (C.C.A. 8, 1943). Congress, in the National Emergencies provisions of the Act, has not declared therein the existence of a national emergency, nor, as above observed, has it provided the standards or guides in the determination of what shall constitute imperiling of national health or safety. In so vesting the court, Congress has empowered the court with nonjudicial functions. This is not "judicial power", within Article III of the Federal Constitution, with which Congress may vest federal courts.

Furthermore, Congress alone has the power to legislate and to delineate what shall be considered lawful and unlawful, and to establish penalties and remedies. Under Section 208 of the Act, it is only when a court injunction becomes effective that conduct becomes unlawful, not because such conduct conflicts with any Act of Congress but merely because Section 208 attempts to give to Federal District Courts power to outlaw by injunction what is otherwise legal. Thus, conduct becomes unlawful, not by reason of existing law, but solely through judicial action.

II

Petitioners Were Not Legally Bound to Comply with the Restraining Order Because Its Issuance Was Beyond the Court's Jurisdiction and It Required Performance of Illegal and Unconstitutional Conduct

Even though the Court concludes that Petitioners contemned the restraining order, "violation gave no sufficient cause for sustaining the conviction for contempt" in this case where jurisdiction depended wholly upon constitutionality of the statute under consideration, and, where, for

constitutional and other reasons, jurisdiction could not and did not attach. While petitioners believe that the doctrine which requires obedience to void orders, enunciated by the Supreme Court in *United States* v. *United Mine Workers of America,* 330 U. S. 258, should be reconsidered and corrected, they are not foreclosed from relief in this action by the postulates of that case.

A comparison of the involvements in the former *United States* v. *United Mine Workers of America* case, *supra,* and those in the instant case, conclusively demonstrates the inapplicability of the former decision to the case now under consideration and the Court of Appeals' erroneous conclusion that the "same question, under slightly different facts, was before the Supreme Court in the prior case."

The former case concerned a declaratory judgment in regard to defendants' right to terminate, by unilateral action, the contract which had been entered into between the Union and Secretary of the Interior Krug. On November 15, 1946, "the union, by John L. Lewis, notified Secretary Krug that 'Fifteen days having now elapsed * * * the United Mine Workers of America * * * hereby terminates said Krug-Lewis Agreement as of 12 o'clock P. M., Midnight, Wednesday, November 20, 1946.' " (330 U. S. 265). On November 18—two days before the date set for termination of the Agreement—Government sought and obtained a temporary restraining order restraining defendants "from continuing in effect the notice of November 15." Therein the Supreme Court declared that the injunction was issued for "the purpose of preserving existing conditions" until there could be an adjudication of the issue of Union's right to terminate that Agreement. The injunction was ancillary to the main proceeding, and Government insisted, and the

trial court declared, that the purpose of the order *was not to tell the miners that* "they cannot strike."[21]

The instant case had for its object, as declared by the District Court, "that the miners go back to work." The District Court declared that if the national health and safety "*was imperiled by the walkout they (the miners) would have to go back to the mines.*" (Italics supplied.) (R. 361.)

Further, it required conduct, as hereinbefore demonstrated, which conflicted with other rights secured by the Federal Constitution.

Fully aware that in the first *United Mine Workers of America* case, *supra,* Mr. Chief Justice Vinson observed that an order issued by a court must be obeyed until reversed, even without regard for the constitutionality of the act under which such order is issued, and cites as "impressive authority" therefor *Howat* v. *Kansas,* 258 U. S. 181, the *Howat* case is readily distinguishable from the instant proceedings, for therein then Chief Justice Taft was careful to note that (p. 190)

> "The injunction suit * * * was a proceeding wholly independent of that act, and the district court, in entertaining it did not depend on the constitutionality of

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[21] Both the former case and the instant one were prosecuted in the District Court of the United States for the District of Columbia, and in both cases District Judge T. Alan Goldsborough was the presiding jurist.

On page 173 of the record in the first UMWA case the following is shown:

> "Mr. Padway: Now, if the Court please, and really—and whatever I do say, whatever I say is—and I cannot help putting it bluntly—Your Honor's order tells these men that they cannot strike—period. And, tells them that if they do go on strike, in the light of that order, that they will subject themselves to punishment.
>
> "The Court: The Court didn't so understand the order."

that act *for its jurisdiction or the justification of its order.*" (Italics supplied.)

The Court of Appeals erred in holding that the trial court had jurisdiction over the subject matter and the persons and that this contempt case was one within the trial court's general powers which required obedience until reversed. Where, as in the instant case, jurisdiction could not attach because the statutory provisions are unconstitutional and jurisdiction is wholly dependent thereon, "Jurisdiction over the subject matter"—a factor required even by the majority opinion in the first *United Mine Workers* case, *supra*— is lacking and, therefore, the restraining order was wholly void and compliance therewith obviated.

Furthermore, even though the statutory provisions are not unconstitutional, jurisdictional requirements, prerequisite to the issuance of the restraining order were not satisfied, and this is apparent upon the face of the pleadings themselves. Since Government brings its action pursuant to Section 208 of the Act, and since jurisdictional prerequisites were mandatory to invest power, absent such prerequisites the Court's order was void.

Elsewhere herein it has been shown that the restraining order violated fundamental rights and that it likewise imposed the duty of placing the coal miners in a status of involuntary servitude. If, without jurisdiction a court may require obedience to an invalid order, then indeed is there fulfillment of the prophecy made by Mr. Justice Rutledge in the first *United Mine Workers* case where, in his dissenting opinion, he declared that

> "Constitutional rights would be nullified by the force of invalid orders issued in flat violation of the constitutional provisions securing them, and void for that reason."

In *Ex Parte Rowland,* 104 U. S. 604, 618, the Court stated:

> "It follows that if the command of the writ was in excess of jurisdiction, so necessarily were the proceedings for contempt in not obeying."

In *Thomas* v. *Collins,* 323 U. S. 516, violation of an injunction issued by a Texas court restraining Thomas, pursuant to a Texas statute, from making a scheduled speech, resulted in contempt proceedings and in imposition of a jail sentence and a fine for such violation. These were upheld by the Supreme Court of Texas, but the Supreme Court of the United States reversed the judgment because the statute upon which the restraining order had been issued "contravenes the constitution". (P. 543.) See also *Ex Parte Fisk,* 113 U. S. 713; *Ex Parte Young,* 209 U. S. 123, *In re Blaney, supra.*

The power of Federal courts to punish for contempt of their authority is, by statute, restricted to disobedience of "any *lawful* writ, process, order, rule, decree, or command of the said courts." (Italics supplied). 36 Stat. 1163, 28 U. S. C. A. 385. A temporary restraining order issued by a Federal court, pursuant to a statute void because it empowered a court to command conduct in contravention of basic law, could not be said to be a "lawful order". Government's position that obedience to the temporary restraining order of April 3 was required, must be considered in the light of Government's complaint in the contempt proceedings that the Court's order to petitioners that they order the miners to return to work had been disobeyed. The Court's order was not merely that the *status quo* be maintained, but that a preexisting condition be accomplished through petitioners' ordering the miners to resume their employment. To sustain Government's position that obedience was required is to say that Congress may empower

Federal district courts to order conduct wholly violative of fundamental law—and even more—without notice and without hearing. No plainer usurpation of judicial power is conceivable than an assumed jurisdiction to determine jurisdiction, by which a court may compel, under threat of fine and imprisonment, acts and conduct violative of the Constitution, to which the courts themselves owe their existence, power and authority. The assumption of jurisdiction for such purpose does not attain even the status of the frivolous assertion of jurisdiction condemned in the former case of *United States* v. *United Mine Workers of America, supra.*

If as Government contends, obedience to the writ was required pending determination of the constitutionality both of the statutory provisions involved and the conduct commanded to be performed by the writ, regardless of the validity thereof and regardless of its requirements of unconstitutional conduct, then federal courts have been accorded a position where judicial power transcends the Constitution itself. In a recent case (*Ex parte Henry,* 215 S. W. (2) 588, 595, decided October 13, 1948), wherein individuals had been held guilty of contempt for violating a temporary injunction, the Texas Supreme Court discharged them from custody declaring:

> *"So long as the fundamental law guarantees the right of a citizen to do a given act, that act, cannot be effectually condemned either by statute or by judicial decree."* (Italics supplied)

The Court of Appeals clearly misinterpreted the prior *Mine Workers* case, which was not concerned with the question of a Congressional enactment or a court decree void because they intruded upon rights guaranteed by the Constitution. The Appellate Court erred in its conclusion

that the instant case fell within the application of the principle enunciated in the earlier case.

It is submitted that the restraining order of April 3 was void and beyond the District Court's jurisdiction and power; and being void for constitutional reasons, obedience thereto was not required. The District Court was without jurisdiction to impose the judgments and sentences complained of.

III. Judgments and Sentences of Criminal Contempt Are Without Supporting Factual Basis and Are Contrary to Law

The trial court concluded that beyond a reasonable doubt Union and Lewis, after service upon them of the restraining order, wilfully, wrongfully and deliberately disobeyed and violated that order. The Court of Appeals stated it could not say that there was necessarily a reasonable doubt upon that score, or that the findings of fact were not supported by substantial evidence. Petitioners submit that the Court of Appeals erred in so holding.

Judgments and sentences herein complained of are for criminal contempt. (R. 152, 153, 381). Being for criminal contempt, proof must be such as to convict petitioners beyond reasonable doubt. *Michaelson* v. *United States*, 266 U. S. 42. Proof in the instant proceedings does not satisfy this test.

(1) *The Trial Court's Findings of Fact and Conclusions of Law of Union's Responsibility for the Alleged Strike Are Not Supported By Competent and Substantial Evidence And Are Contrary to the Evidence and to Law.*

Government's case is bottomed upon its contention that the work stoppage which occurred after March 12 was "a strike on the part of union", while petitioners asserted that such stoppages were "those, and those alone, which the

men affected thereby individually and of their own volition determined."[22] To hold the Union responsible for the alleged strike, the trial court enunciated (1) its "nod-wink-code" theory, and (2) its postulate that "as long as a union is functioning as a union it must be held responsible for the mass action of its members." (R. 365) We shall discuss these propositions *seriatim*.

Activation of the Pension Fund required by the 1947 Agreement had not been accomplished because bituminous coal operators signatory to said Agreement through their Trustee, had dishonored the Agreement, had defaulted under its provisions affecting the Welfare and Retirement Fund, and had failed to comply with the provision of said contract requiring the signatories thereto to settle and determine disputes by the full use of free collective bargaining as heretofore known and practiced in the bituminous coal industry. Following unsuccessful attempts by Lewis to have certain coal operators with full means of resolving the Pension dispute so to do, Lewis, on February 2, advised all operators signatory to the Agreement that the contract was being dishonored as a result of their Trustee's conduct, and that it "constitutes an outstanding, unresolved dispute, national in scope and character, affecting the integrity of the contract and impeding its fulfillment." (R. 101). This notice reserved for the Union "the right at will to take any independent action necessary to the enforcement of the contract." Such was Union's way of attempting to resolve the dispute and its traditional method of notifying the coal operators that collective bargaining was required to obtain contract compliance. Between February 2 and March 12 Lewis awaited overtures from the operators, and receiving none, and the dispute remaining unresolved, Lewis, as

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[22] See affidavit of John L. Lewis, dated April 7; also letter from Lewis to Officers and Members of Local Unions dated April 3. (R. 104.)

Union's President and as Fund Trustee for the miners, advised them of the dispute (R. 102) and asked that they

> "Please discuss this matter in your Local Union so that our membership may be fully advised. You will later hear more from this office on this subject."

The trial court concluded that thereby Union had called the alleged "strike." The Court declared: "Now does that constitute a nod, or a wink, or the use of a code in order to call a strike? Is there any other reasonable interpretation?" (R. 365). That Lewis, as Trustee of the Fund, owed the beneficiaries thereof a legal duty to keep them informed of the facts relating to the Fund (2 Scott on Trusts, Sec. 173) was never considered by the trial court.

The rule of law respecting probative character of circumstantial evidence is that the circumstances must be such as to produce a moral certainty of guilt and to exclude any other reasonable hypothesis or theory of innocence. Wharton's Criminal Evidence, 11th Ed. Vol. 2 Sec. 922, p. 1608.[23] This being a proceeding in which petitioners were sentenced in criminal contempt, the presumption of innocence obtained. *Michaelson* v. *United States, supra.* It is highly significant that in discussing the factual situation upon which the Court concluded that petitioners were guilty of criminal contempt and wherein it espoused the "nod-wink-code" theory, no consideration was given by the Court to the circular of April 3 sent to the coal miners by Lewis, both as Trustee of the Fund and as Union's President, wherein he declared that

> "It is well known to you that I have not in connection with the present dispute, either by the circular of March 12, or by any other circular or document, or at any other

[23] See also *Ezzard* v. *United States,* 7 F. 2d 808 (C.C.A. 8); *Van Gorder* v. *United States,* 21 F. 2d 939 (C.C.A. 8); *Cochran* v. *United States,* 41 F. 2d 193 (C.C.A. 8).

time, authorized, directed, suggested, requested or recommended any stoppage of work or any continuation of any stoppage and I do not now do so. Your actions in this regard in the original instance were your own, individually determined by you. I asked you on March 12 'to discuss the matter in your Local Union so that our membership may be fully advised.' Such discussions as may have been held, or which you may hereafter desire, have been, and will continue to be on your own initiative. As far as I know it is still the inherent right and privilege of American citizens to continue to exercise the right of free speech and freedom of assembly.

"Any action or decision which you may now care to take continues to be entirely for your own determination without direction of any character from me or from any of your International Officers.

"I, therefore, now repeat that you are not now under and have never been under any orders, directions or suggestions, expressed or implied, from me, or any of the Union Officers, to cease work or to continue to cease work in protest to the present dishonoring (as we see it) of the 1947 agreement * * *". (R. 106-7).

Assertions that this circular, sent as aforesaid to the miners, was prepared and issued prior to announcement by the President of the United States of his direction to institute the present action (R. 233) stand unchallenged and uncontradicted by any proof in the record. The statements in the circular stand as clear, positive and unequivocal denial of the Union's responsibility for the alleged work stoppage by individual coal miners, and must be accorded particular pertinence when it is considered that with all the available facilities at Government's disposal, it has failed to produce a single item of testimony or other proof which in any wise refutes, or tends to refute, the assertions and position of the petitioners with reference to their nonresponsibility for the work stoppage. Not one scintilla of

competent evidence was produced by Government that the Union, through Lewis, or he, individually or officially, directly or indirectly, ever authorized, ordered or suggested any stoppage or cessation of work at any time in March, April or any other time in 1948 during this litigation. Not only is the "nod-wink-code" theory of the District Court unsupported by the factual record, it is clearly refuted thereby; and being without factual basis the appellate court should unhesitatingly reverse such finding,[24]

Not only did the District Court ignore positive and affirmative evidence which conclusively refutes Government's charge that the Union went on strike, but the record shows unequivocally that the District Court's finding was based wholly and exclusively on suspicion. This is made abundantly clear from the District Court's statement, when it declared the letter of March 12, to be "a nod, or a wink, or the use of a code" (R. 365), and the further statement by the court that "the decision of the Court, of course, was based on circumstantial evidence; circumstantial evidence which the Court then and now considers conclusive." (R. 381). Mere suspicion, arising from evidence which does not prove the actual commission of the act charged, is not sufficient. *Wharton's Criminal Evidence,* Eleventh Ed., Vol. 2, section 922, states:

> "But when circumstantial evidence alone is relied upon, the facts and circumstances must form a complete chain, and point directly and unerringly to the accused's guilt."

This principle completely harmonizes with that enunciation in *Gompers* v. *Buck's Stove & R. Co.*, 221 U. S. 418, 444,

[24] It is noteworthy that although Union had been ordered in the restraining order of April 3 to instruct the miners forthwith to return to their employment, the Court, in order to convict the petitioners of criminal contempt, utilizes the telegram sent by petitioners to the miners on April 12, advising them that the "Agreement is honored." (R. 368.)

55 L. ed. 797, 807, that "in proceedings for criminal contempt the defendant is presumed to be innocent, he must be proved to be guilty beyond a reasonable doubt."

Not only did the District Court take a position inconsistent with the theory of Government on the legal effect of the March 12 circular,[25] but the District Court having pronounced the "nod-wink-code" theory, then proceeded to announce a purported principle by which it held the Union responsible for the "mass action of its members." The trial Court stated: "* * * as long as a union is functioning as a union it must be held responsible for the mass action of its members." Such pronouncement[26] rejects denial of the doctrine of vicarious responsibility against labor unions adopted by the Supreme Court in *United Mine Workers of America* v. *Coronado Coal Company,* 259 U. S. 344, and *Coronado Coal Company* v. *United Mine Workers of America,* 268 U. S. 295 in which latter case the Court said:

> "* * * Certainly it must be clearly shown in order to impose such a liability on an association of 450,000 men that what was done was done by their agents in accordance with their fundamental agreement of association." (p. 968).

The doctrine enunciated by the trial court was rejected in *United Mine Workers of America* v. *Coronado Coal Company,* 259 U. S. 344, 66 L. Ed. 975, 981. Therein (p. 395) it was argued that where Union officers and members, over whom the Union had disciplinary control, in the course of a strike, do illegal acts in furtherance of the Union cause, the fact that the Union takes no affirmative action disap-

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[25] Government's counsel asserted that "It makes no difference what Mr. Lewis's intention was. Intent bears no part in this matter". (R. 356). The Court's "nod-wink-code" theory clearly is premised upon intent.

[26] The Court characterized its pronouncement as one which "no Court has ever been called upon to announce." (R. 365.)

proving what they have done, is evidence that the acts were really authorized or connived in by the Union and therefore done in behalf of the Union and for its benefit. The Supreme Court, in rejecting such contention, said:

> "The argument of counsel * * * is that, because the national body had authority to discipline district organizations, to make local strikes its own, and to pay their cost, if it deemed it wise, the duty was thrust on it, when it knew a local strike was on, to superintend it and prevent its becoming lawless at its peril. *We do not conceive that such responsibility is imposed on the national body.* * * *" (Italics ours).

Completely disregarded by the Court also were the provisions of Union's constitution relative to the calling of strikes. Sec. 27, Art. IX thereof provides that:

> "The (Executive) Board shall have power between Conventions by a two-thirds vote, to recommend the calling of a general strike, but under no circumstances shall it call such a strike until approved by a referendum vote of the members." (See Government Exhibit 18).

In the second *Coronado* case the Supreme Court in determining whether the Union had participated in a strike said (p. 966):

> "It does not appear that the International Convention or Executive Board ever authorized this strike or took any part in the preparation for it or in its maintenance, or that they ratified it by paying any of the expenses."

The *Coronado* cases, it is submitted, repudiate both the factual findings of the District Court that Union was responsible for the alleged work stoppage and the pronouncement of the novel postulate of the trial court that the Union must be held responsible for the mass action of its members.

The District Court's view that the Union is responsible for mass action of its members is likewise rejected by the decisions hereinbefore cited and discussed which permit concerted and mass action of employees for a lawful purpose and in a lawful manner. Assumption that conduct in the instant case by the coal miners was wrongful is clearly unwarranted.

Further, in view of the fact that the coal miners acted individually in their determination to cease production, the trial court's finding and holding that the walkout did not constitute the exercise of the right of individual employes to quit their labor but was a strike on Union's part is not warranted. There is nothing to show that the miners acted in concert or pursuant to any agreed plan. In view thereof, Government has not proved the existence of a strike within the meaning of Section 501 (2) of the Act, and the Court's holding clearly contravenes Section 502 of the Act which deprives the Court of jurisdiction and power to compel performance of labor by an individual.

The Court of Appeals regarded the question of who caused the walk-out as immaterial. Twice, in the opinion with reference to contempt, it stated that conviction was not for causing the walk-out but because petitioners had not obeyed the restraining order. Aside from the constitutional aspects of the restraining order, which the Court of Appeals likewise did not regard as relevant, the decision of the Court of Appeals is that a person *who has not created the situation* which the restraining order seeks to correct, and who is wholly without fault, must nevertheless respond by doing that which the court directs, and, moreover, it must be done *instanter*. The appeals court stated that "if Lewis had sent on April 5th telegrams of a directory or advisory nature" neither he nor the Union would have been in contempt. (R. 553). Certainly there

is some reasonable time, measured by the facts and circumstances involved, to be afforded for compliance, particularly in situations where the alleged contemnor has had no notice or hearing prior to issuance of the order. As herein indicated, the measuring rod is that of opportunity to accomplish the end proposed. The Court of Appeals' opinion required that Union and Lewis do even more than did the restraining order of April 3. That order directed that the Union forthwith *instruct* members of the Union to return to their employment, but the appellate court declared that disobedience existed because it made no attempt "to direct, instruct or *persuade*" the miners to return to work. These doctrines, petitioners submit are contrary to law and to the principles of the *Coronado* cases, *supra.*

(2) *The District Court's Finding of Imperilment of the National Health or Safety is Not Supported by Competent and Substantial Evidence. The Court of Appeals Erred in Holding that the National Emergencies Provisions Were Not Involved in the Contempt Proceedings.*

In the proceedings for contempt and in the matter of issuance of the preliminary injunction, the trial court entered findings of fact that the strike, if permitted to continue, will imperil the national health and safety. (R. 150, 151, 163). In the Court of Appeals petitioners urged that the evidence did not support the Court's findings. The Appellate Court concluded that the contempt proceedings was not concerned with this question, and did not consider it with reference to the propriety of the preliminary injunction because of its belief that the appeal in Case No. 9944 was moot. Both courts were in error.

Petitioners submit that Government's action was premised upon jurisdiction pursuant to Section 208 of the

Act, and in order for such jurisdiction to be invoked required proof that the national health or safety would be imperiled by continuance of the alleged strike. Absent involvement of the Act, the assertion of jurisdiction was frivolous. *United States* v. *United Mine Workers of America, supra.*

To sustain its contention of imperilment of national health and safety at the hearing on the issue of contempt, Government offered the testimony of witnesses W. H. Young, Lewis Bassie, Acting Director of the Officer of Program Planning, Department of Commerce, Nelson Lee Smith, Chairman of the Federal Power Commission, and Arthur Gass, Director of Rail Transportation, Office of Defense Transportation. Although there was admitted in evidence, over petitioners' objection, Exhibits 7 and 11, (R. 457, 459, 271, 287) which purported to show that within fifteen days electric power utilities, coke plants, steel and rolling mills, and other industrial enterprises would exhaust their stockpiles of bituminous coal, yet on April 14—the date of the hearing—both witnesses Young and Bassie (R. 275, 296) admitted on cross-examination that they knew of no consumers whose stockpiles had been exhausted. While Bassie asserted curtailments of the use of coal in the steel industry, there is nothing to show such curtailment to be due to any alleged work stoppage in coal production; and Bassie admitted that furnaces in the steel industry are shut down in all periods of each year for reasons independent of coal shortages. (R. 296). He admitted, too, that all Government restrictions on the use of railroad coalburning facilities had been cancelled because of "early resumption of normal mining operations." (R. 298). Nelson Lee Smith testified that "We have data obtained from electric utilities representing the bulk of the industry which shows as of April 8, 1948, the systems had an average of about 49

—the precise figure is 49.7—days' supply of bituminous coal. (R. 324). Likewise witness Gass testified that for the week ended April 12, 1948, railroads had a stockpile sufficient to last 20.3 days (R. 319, 324). Gass further testified that orders for reductions in railroad services were rescinded because

> "the action of the United Mine Workers in advising their people to return to work was taken on Monday. We waited until Tuesday morning to measure the return to work of the miners and the number of cars that were ordered, before we took any action, and we felt when we had a return of I would say, about 60 per cent plus, on a rough guess, of the productive capacity of the mines—we felt then that we were safe * * * in suspending the orders pending further action." (R. 325).

Not only does such testimony fail to establish the likelihood that the national health or safety would be imperiled, but Government's witnesses failed to take into consideration that coal was being produced at the rate of more than two million tons per week (R. 279), nor did they give consideration to curtailment of production in relation to the eighty-day period, which is the maximum period for which the statute authorizes that a strike be enjoined. The burden of proving that the national health or safety would be imperiled was clearly upon Government, and it failed to sustain that burden. This is true not only in the matter of the contempt proceeding, but likewise in the issuance of the preliminary injunction on April 21.

Under the requirements of the *Schenck, Bridges* and *Thornhill* cases, *supra,* only proof which shows a "clear and present" danger could suffice in the issuance of either the temporary restraining order, the imposition of criminal sanctions in the contempt case, or the preliminary injunc-

tion. No affidavit found in the record, and none of the evidence adduced before the trial court shows any "clear and present danger" or that a substantial evil is present. How speculative, how meaningless and frivolous are the contents of the affidavits and the testimony of Government witnesses is illustrated by their admissions that they knew of no consumers whose stockpiles had been exhausted at the time of hearing, which was approximately a month following the alleged walkout.

The terms "continued suspension", "a prolonged stoppage" and like expressions found in the quoted portions of affidavits and excerpts from testimony are meaningless. What probative value may be placed upon the Johnson affidavit which recites, *inter alia*, that as of March 29, 1948, "Seven railroads had less than 10 days' supply," when on April 14, as the record shows, no consumer's supply had been exhausted?

In an appraisal of whether there is a present and clear danger and whether Government has sustained its burden of showing clearly that the national health and safety were imperiled, the character of testimony offered by Government becomes pertinent. The witnesses offered by Government spoke of matters not within their personal knowledge and based not upon facts but, as one witness admitted, upon "certain assumptions." (R. 271). We reiterate that only upon the clearest of proof, and absent any question of the competency of testimony, should fundamental rights such as are involved in the instant case be denied even for a temporary period.

Not only does the proof fall far short of showing a clear and present danger but also the likelihood that within the 80-day period possible under the statute the nation's health and safety would have been imperiled.

Only upon evidence plainly demonstrating a clear and present danger to correct an existing substantive evil may it be said that jurisdiction may exist in the district courts to issue either a temporary restraining order or the preliminary injunction, or to impose fines upon Petitioners for alleged criminal contempt. Even then jurisdiction could exist only to regulate but not deny totally the right to strike.

Absent a showing of national health or safety imperilment, jurisdiction did not attach for the issuance of the temporary restraining orders, for the contempt proceedings or for imposition of criminal sanctions in said contempt proceedings.

(3) *There is No Evidence That Union and Lewis Contemned The Court's Order*

The restraining order allegedly contemned was served on Petitioners shortly before noon on April 5; and within less than two days thereafter they undertook to dissolve and vacate the order. This was their first opportunity of declaring nonresponsibility for the situation which Government sought to enjoin, as well as to challenge the unconstitutionality of the order and the statutory provisions attacked herein. They sought a hearing on their motion on April 9,[27] but the Court scheduled it for April 12. Almost immediately after Petitioners filed said motion, Government, by petition, sought and obtained from the Court a rule to show cause why Union and Lewis, as Union's President, should not be punished as and for a contempt of Court and hearing thereon was likewise set for April 12. The rule required a trial, if by their returns "it shall be found that the alleged contempt be not sufficiently purged."

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[27] Rule 65(b) Federal Rules of Civil Procedure required two days' notice.

On the return day Petitioners, by counsel, detailed to the Court that "duly accredited representatives of the respondents have since April 8th, and are now, meeting with representatives of" operators (R. 236), and detailed also the re-creation of the Fund's Board of Trustees on April 10, the meetings of the Board on April 11 and 12, called by Lewis as Chairman of the Board, the activation of a Pension Fund and Plan on the morning of April 12 (prior to the scheduled Court hearing at ten o'clock A.M.), that Lewis, as Union President, had telegraphed a message to the coal miners advising them that:

> "Your voluntary cessation of work should now be terminated and your protest ended. It is the belief of the International Union and your Officers that the production of coal should be resumed forthwith * * * Therefore, you are now officially advised that you should return to your usual employment immediately upon receipt of this telegram * * *."

and that another telegram sent by Lewis informed the miners that—

> "Pensions granted. The agreement is now honored."

Petitioners assert that such conduct constitutes a complete and good faith compliance with the restraining order. In truth, the very actions of Lewis (without which the Union members would not have been informed of the settlement of their grievances) was absolute evidence of good faith compliance with the restraining order and constituted a complete purge, if purge was required.

Power of federal courts to punish for contempt has been judicially declared to be limited to "the least possible power adequate to the end proposed." *Anderson* v. *Dunn*, 6 Wheat. 204, 231, 5 L. Ed. 242; Matter of Michael, 326

U. S. 224. Alleged contumacy, therefore, must be tested by the "end proposed".

In the instant case the "end proposed" was that coal production be resumed. Full accomplishment thereof could be effected only by the will of individual coal miners. The Court placed upon the Union the duty of ordering the miners immediately to return to their employment. Certainly the telegram of April 12, sent by Petitioners to the coal miners, fully coincided with the decree's mandatory directive; certainly it was consonant with the decree's negative restraints; and with certitude it sought to accomplish—and did accomplish—precisely what Government undertook in institution of its action. Petitioners' assertion, on the return day, of its good faith in sending the telegrams, believing that thereby production of coal would be resumed and continued, was followed by their seeking a continuance of the contempt proceedings for one week (R. 244-5), but this request was summarily denied.[28] That production did ensue is proved in the proceedings subsequent to the Court's pronouncement of its judgments and sentences of contempt.[29] Conclusively proving that the "end proposed" was accomplished is the fact that the Court never deemed it essential to impose civil sanctions upon Petitioners.[30] Whatever delay there may have been in the resumption

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[28] "The Court: The Court sets this case down Wednesday at 10:00 o'clock; no debates, no argument." (R. 245.)

[29] On April 12 (R. 245) and on April 21 (R. 393, 434, *et seq.*) Petitioners insisted that the dispute had been fully settled and that because thereof, Sec. 210 of the Act mandatorily required discharge and dismissal of the injunctive proceedings. Nevertheless, the Court, on Government's motion, issued the preliminary injunction on April 21. On May 18 Government moved for discharge of the injunction (R. 446). This motion was sustained June 23 (R. 453, 204).

[30] On April 23, on Government's motion consideration of the issue of civil contempt was postponed indefinitely (R. 441) and on May 18, Government received the Court's approval of its motion to dismiss the civil contempt. (R. 444.)

of coal production did not result from any conduct on Petitioners' part, for the record discloses nothing upon which the Court might even speculate a violation even under its "nod-wink-code" theory, but such delay stemmed from the determination of both Government and the trial court to punish Petitioners. But for the attitude of a determined Government and Court to impose punitive sanctions upon Petitioners, full production of coal would have been resumed promptly following receipt of the April 12 telegrams. Clearly judgments and sentences for criminal contempt, and the Court's findings and conclusions on civil contempt, are contrary to the evidence and to the law.

Indeed Petitioners, by their actions from April 5 to April 12, did everything within their respective powers to resolve the pension dispute, from which stemmed the individual miner's determination to cease work, and in fact did resolve such dispute. In every factual and legal sense of the word, they fully purged themselves, if such purge was legally required.

Petitioners are charged herein with having "knowingly, wilfully, wrongfully, and deliberately disobeyed and violated" certain portions of the temporary restraining order. If they may be held guilty of that charge, it is essential that their conduct in relation thereto shall have been *wilful*. In *United States* v. *Murdock*, 290 U. S. 389, 394, the Court declared that where a *wilful* failure to observe statutory directions is a penal offense, *an evil motive* is a constituent element of the crime. The same is applicable where there is a violation of a Court decree. *United States* v. *Goldman*, 277 U. S. 229, 235. Tested by this principle, clearly and unequivocally Petitioners are not guilty of contempt.

The power of Federal District Courts to punish for contempt is a restricted one, and this restriction has been

judicially recognized in *Matter of Michael*, 326 U. S. 224, 90 L. Ed. 30, 32, wherein it is stated:

> "Not very long ago we had occasion to point out that the Act of [March 2] 1831, 4 Stat. 487, c. 99, from which § 268 of the Judicial Code derives represented a deliberate Congressional purpose drastically to curtail the range of conduct which Courts could punish as contempt. *Nye* v. *United States*, 313 U. S. 33, 44-48, 85 L. Ed. 1172, 1178-1180, 61 S. Ct. 810. True, the Act of 1831 carries upon its face the purpose to leave the courts ample power to protect the administration of justice against immediate interruption of its business. But the references to that Act's history in the *Nye* case, *supra, reveal a Congressional intent to safeguard constitutional procedures by limiting courts, as Congress is limited in contempt cases, to 'the least possible power adequate to the end proposed.' Anderson* v. *Dunn*, 6 Wheat. (U. S.) 204, 231, 5 L. Ed. 242, 248. The exercise by federal courts of any broader contempt power than this would permit too great inroads on the procedural safeguards of the Bill of Rights, since contempts are summary in their nature, and leave determination of guilt to a judge rather than a jury. * * *" (Italics supplied).

The "end proposed" by Government in the institution of its injunctive proceeding and by the Court in issuance of the April 3 restraining order, was that production of coal should be resumed. The petitioners accomplished that "end proposed". In *In re Rice*, 181 F. 217, 228, it was said:

> "No one can be punished for a criminal contempt unless the evidence makes it clear that he intended to commit it. To doubt is to be resolved in favor of respondent."

Quoted with approval in *United States* v. *Kroger Grocery & Baking Co.*, 163 F. (2) 168, 173 (C. C. A. 7, 1947).

Emphatically, it may not be said that Petitioners are guilty of criminal contempt. It may not be said that Petitioners' purpose, tested in the light of their conduct, was "done with a bad purpose." *Felton* v. *United States*, 96 U. S. 699, 24 L. Ed. 875.

Motions for judgments of acquittal (R. 347) and in arrest of judgment (R. 369) were overruled (R. 348, 370), thus raising questions of law in relation to the evidence. *United States* v. *Socony-Vacuum Oil Co.*, 310 U. S. 150.

It is submitted that the trial court's findings and conclusions of law (R. 149-151) that Petitioners beyond a reasonable doubt, wilfully, wrongfully and deliberately disobeyed and violated the terms of the temporary restraining order of April 3 are in conflict with law and not supported by law or by any competent and substantial evidence. The Court of Appeals erred in its conclusion that it could not say there was necessarily a reasonable doubt upon that score, or that the findings of fact were not supported by substantial evidence. (R. 552). Reversal of the holdings of both the trial court and the Court of Appeals is required.

The Court of Appeals admitted (R. 552) that the evidence supports petitioners claim that they endeavored to settle the basic dispute, but it inconsistently asserts that "Union and Lewis ignored the order until the basic dispute was settled" and that the evidence shows "conclusively that pending the settlement of that dispute they made no attempt to restore normal production" (R. 552).

IV

The Fines Imposed Upon the Union and John L. Lewis Are In No Way Related to any Competent and Substantial Evidence and Are Contrary to Law. They Are Excessive by Constitutional and Decisional Standards

Imposition of the fine of $1,400,000 upon Union and $20,000 upon Lewis followed recommendation of Government's counsel. Basis therefor as to Union was

> "that this Union also committed a contempt in 1946 substantially similar to the one now before the Court, and that the penalty of $700,000 imposed for that offense has failed to deter it from repeating the offense • • • it is Government's view that double the amount of the penalty imposed in the previous case is both necessary and appropriate" (R. 375).

and similar reason was offered for the recommended fine against Lewis (R. 375). The Court of Appeals held that the fines imposed, measured by the prior fines, were not excessive. In so holding, the Court of Appeals erred.

True, in the first *United Mine Workers* case, as one of the factors that the Court might use in imposing a fine for criminal contempt, the Chief Justice included "The necessity of effectively terminating the defendant's defiance as required by the public interest" but of this Mr. Justice Rutledge, in his dissenting opinion, observed (330 U. S. 383):

> "Moreover, the Court's enumeration of factors to be taken into account indicates expressly • • • that one is the coercive effect of the imposition for the future, *though it is thoroughly settled that in contempt criminal punishment is to be laid only for past conduct. Gompers* v. *Stove & R. Co., supra,* and authorities cited." (Italics supplied.)

Subsequent pronouncement, however, in *Penfield Co.* v. *Securities & Exchange Commission* (330 U. S. 585, 594), wherein Mr. Justice Douglas stated:

> "When the Court imposes a fine as a penalty, it is punishing yesterday's contemptuous conduct. *When it adds the coercive sanction of imprisonment, it is announcing the consequences of tomorrow's contumacious conduct.*" (Italics supplied),

decisively sustains the observation of Mr. Justice Rutledge and substantiates the view that as a deterrent to contemptuous conduct in the future, civil sanctions, rather than criminal, are to be utilized. Such pronouncement likewise rejects the standard upon which Government's counsel based his recommendation as to the fines which the trial court actually imposed. A contempt proceeding, even when denominated as criminal, and though characterized as a *criminal offense*, is not a criminal prosecution. Such distinction is noted in *Myers* v. *United States*, 264 U. S. 95, wherein it was contended (p. 98) that the prosecution for contempt is a criminal proceeding, the Supreme Court (p. 104) declared:

> "While contempt may be an offense against the law and subject to appropriate punishment, certain it is that • • • proceedings to punish such offenses have been regarded as *sui generis* and not 'criminal prosecutions' within the Sixth Amendment or common understanding."

Reiteration of this distinction appears in *Ex Parte Grossman*, 267 U. S. 87, 117.

While the deterring factor urged by Government to sustain the excessive fines imposed upon Petitioners may be justified through the medium of increased punishments in

criminal prosecutions, the necessity therefor is obviated in contempt situations because of the use of civil sanctions.

But the factor of deterring future contempt was but one element which the majority opinion used as a juridical guide for imposition of criminal punishment. Applying the other factors expressed by the Chief Justice, petitioners maintain that their conduct, as reported to the trial court on April 12, and which stands unchallenged, requires that the fines imposed be set aside *in toto* as to both the Union and Lewis, and held for naught. Those factors were:

> "• • • the extent of the wilful and deliberate defiance of the court's order, the seriousness of the consequences of the contumacious behavior, the necessity of effectively terminating the defendants' defiance as required by the public interest • • •"

In that case, the Chief Justice in justifying the requirement of a majority of the Court that the Union pay a fine of $700,000 and that Lewis pay $10,000, noted that "the contempt had continued for 15 days from the issuance of the restraining order until the finding of guilty"; that the "wilfulness had not been qualified by any concurrent attempt on defendants' part to challenge the order by motion to vacate or other appropriate procedures"; and that Lewis had "stated openly in court that defendants would adhere to their policy of defiance." Under such circumstances the fine imposed upon Union amounted to about $50,000 a day.[31] But these elements of defiance are wholly lacking in this proceeding. Actually, the record shows no wilful and deliberate defiance tested by the "end proposed" by Government's suit; it depicts "no serious consequences of (the) contumacious behavior"; and rather

[31] The fine, as recommended by Government and adopted by the Court was at a rate of $250,000 a day for a *fourteen-day* period.

than reflecting "the necessity of effectively terminating the defendants' defiance", it evidences positive, good faith obedience to the end that coal production was resumed and continued.

Though petitioners' conduct be stamped as contumacy, nevertheless the fines are excessive and in assessing them, the trial court clearly abused its discretion and violated the mandate of the Eighth Amendment to the Federal Constitution (which prohibits imposition of cruel and unusual punishments and excessive fines), as well as the guide set forth in the first *United Mine Workers* case. What we have heretofore said on the issue of contempt is equally applicable to this position of petitioners. Union and Lewis promptly sought and urged judicial determination of the validity of the Court's action in issuance of the *ex parte* restraining order, and within less than seven days following service thereof on Union and Lewis, had not only advised the miners to resume production of coal, but had so actively directed their attentions to the situation which prompted Government's institution of the action that the *cause* for the walk-out by individual miners had been removed and the dispute fully settled. Only by conduct inconsonant with the requirements of the restraining order might it be said that there had been disobedience of the restraining order. Only then could it be said that there was wilful and deliberate violation thereof. "Contempt must be measured by the intent with which it is committed."[32] The record shows that coal production was resumed and continued; that coal miners returned to their employment; and that such return followed the efforts and advice contained in the telegram of April 12. It is submitted that the evidence in the record necessarily and

[32] *State* v. *Koon*, — Mo. —, 201 S.W. 2d 446, 457 (1947).

conclusively negatives the charge of wilful and deliberate violation of the restraining order.

In *United States* v. *United Mine Workers of America*, 330 U. S. 258, 304, the majority opinion recites:

> "It is a corollary of the above principles that a court which has returned a conviction for contempt *must*, in fixing the amount of a fine to be imposed as a punishment or as a means of securing future compliance, *consider the amount of defendant's financial resources and the consequent seriousness of the burden of that particular defendant*" (Italics supplied).

Such consideration was totally lacking herein, for there was no evidence before the trial court of petitioners' financial resources or the consequent seriousness of the burden of either Union or Lewis.[33]

It was error for the trial court and the Court of Appeals to consider as a factor in fixing such fines, the fact that petitioners had been declared guilty of contempt in 1946. In *Myers* v. *State*, 22 N. E. 43 (Ohio, 1889), pt. 6 Syl. the Court said:

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[33] The record contains only the following concerning the financial resources of the petitioners and the consequent seriousness of the burden of each of them (R. 383).

"The Court: Mr. Hopkins, does your client desire before the Court imposes sentence, to make any representation to the Court as to his financial condition?

"Mr. Hopkins: There is no necessity therefor, your Honor. It has not changed since the previous time alluded to. His constitutional salary remains the same, and his circumstances are approximately the same, and in addition to that, your Honor, we submit that that defendant is here in his official capacity as President of the Mine Workers, and not in his individual capacity as was heretofore the case.

"The Court: Well, you know the Supreme Court took a different view, and they took a view in the other case that a fine against the President was properly assessed.

"Mr. Hopkins: Yes.

"The Court: Defendant does not desire to be heard?

"Mr. Hopkins: The statement of his condition remains the same, sir."

> "It is not competent for him (Judge) to take judicial notice of, and consider in his deliberations, that the respondent had been guilty of another contempt of the same court, for which he had theretofore been tried and found guilty. And where it appears that the consideration of such facts may have influenced the exercise of discretion, in fixing the penalty, to the prejudice of the respondent, the proceeding will be reversed for such error."

From the foregoing discussion, it is clear that the amounts of the fines imposed on each of the petitioners were contrary to law and the evidence, and are excessive by constitutional and decisional standards, and the judgment imposing such fines should be reversed by the Supreme Court.

When it is considered that but seven days were involved—and actually only two days when Government sought and obtained the rule to show cause—the fine imposed on the Union may be calculated on the basis of $200,000 per day, or four times the per-day basis which the Supreme Court used in the first *United Mine Workers* case, when, as the Chief Justice declared in the majority opinion, Lewis "stated openly in Court that defendants would adhere to their policy of defiance." The Court of Appeals stated that obedience to the temporary restraining order should have been an *instanter* obedience. That Court stated: "It is plain enough that if Lewis had sent on April 5th telegrams of a directory or advisory nature * * * neither he nor the Union would have been guilty of contempt of the court's order." Even the trial court admitted that it would have taken the miners until April 8 to get back to work (R. 262). Upon that basis, only three work days would have elapsed between that date and the return day of the rule. Hence, the fine imposed was in excess of $466,000 per day. Measured by the standards therein, the circumstances herein

clearly do not warrant imposition of the fine either upon the Union or upon Lewis.

The fine imposed upon Lewis must, in any event, be reversed since Lewis was cited in contempt in his capacity *as President of the Union* (R. 124), whereas judgment and sentence were imposed upon him *as an individual*, and not in his official capacity. (R. 152).

V. The Restraining Orders and Judgments in Criminal Contempt Were Beyond the Court's Jurisdiction Because Jurisdictional Prerequisites Were Lacking

In addition to the issue of the constitutionality of the statutory provisions hereinabove discussed challenging the court's jurisdiction, petitioners assert that the restraining orders and judgments in criminal contempt were beyond the court's jurisdiction because jurisdictional prerequisites were lacking. The Supreme Court has heretofore declared the necessity therefor before the injunctive process may be issued. *Milkwagon Drivers Union* v. *Lake Valley Farm Products, Inc.* 311 U. S. 91.

1. *The Dispute Involved Herein is Not a "Dispute" Within the Purview of Sections 206-210 of the Act.*

The National Emergencies provisions of the Act (Sections 206-210) are concerned with a "dispute" which lends itself to mediation services and to ultimate determination by employees who would be affected by a strike. Unless the differences which bring about a work stoppage, even though of national scope, are such as fit into the pattern provided by the context of National Emergencies provisions, a "dispute" within the contemplation of said provisions would not exist and jurisdiction provided for in Section 208 would not be available to restrain a strike or the continuation thereof.

While differences in the instant proceeding involved differences concerning the activation of a pension fund and plan, the beneficiaries of which were coal miners, the controversy from which the alleged work stoppage emerged concerned variant opinions between trustees of the Fund in whom the duty of activating and the discretion of administering, the fund and plan had been vested under the terms of the 1947 Agreement. The dispute could not have been ultimately determined by the secret ballot of the employees involved in the dispute, nor was it one for settlement under services of the mediation service.

Activation of the pension fund and plan having become a reality, and Government having theretofore obtained its *ex parte* temporary restraining order and its preliminary injunction, and having prosecuted petitioners for criminal and civil contempts, Government then undertook to dismiss the preliminary injunction issued April 21, and in speaking of the sections noted above, Government's counsel stated:

> "Now, Your Honor, the unusualness of this dispute does not concern, as this section intended, terms or conditions of employment through which the National Labor Relations Board could hold an election, nor is there an appropriate controversy, to which the Mediation Service could address itself in attempting to draw the parties together." (R. 447).

To these remarks the Court significantly stated:

> "If it is not appropriate now it was not in the first place." (R. 449)

Again, counsel for Government stated (R. 448-9):

> "We feel that it is appropriate to assume that these people, like good American citizens throughout our land, who constantly appeal their controversies to courts of law, will take that ruling and abide by it in full, and for that reason, your Honor, and for the rea-

sons that I have pointed out in describing *this machinery which Congress set up, which seems in this case, at this posture, not appropriate for this kind of a controversy.*" (R. 448-9) (Italics supplied).

The dispute involved herein not being within the purview of the statute, jurisdiction in the trial court was wholly wanting. Therefore, its *ex parte* order of April 3, its preliminary injunction issued April 21, and judgments and sentences in criminal contempt, were wholly void.

2. *The Complaint and Exhibits Attached Thereto Did Not Suffice to Invoke the Jurisdiction of the Court.*

The complaint charged that the "strike sought to be enjoined herein consists of a concerted stoppage of work on the part of the Union", and "The Union went on strike." As these averments are mere conclusions, they did not suffice to establish the truth of the facts asserted,[34] especially since they were made on information and belief.[35]

Nor were these facts supplied by the exhibits and affidavits attached to the complaint. These being jurisdictional facts, failure to prove them renders the entire action fatal.

Likewise Section 208 (a) (ii) conditions jurisdiction to enjoin a strike or the continuing thereof on imperilment of the national health or safety. Neither the averments of the complaint nor the supporting affidavits[36] sustain such prerequisite. Not only are the averments made in the affidavits not within the knowledge of the affiants, they are

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[34] *Minneapolis St. Ry. Co.* v. *City of Minneapolis*, 189 F. 445; Edmunds, Civil Rules of Federal Procedure, Vol. 2, p. 1551.

[35] *Behre* v. *Anchor Ins. Co.*, 297 F. 986 (C.C.A. 2).

[36] These are the affidavits of J. A. Krug, David Bruce, J. M. Johnson, Nelson Lee Smith, Raymond S. McKeough, James A. Crabtree, and S. W. Cramer, Jr. (R. 50-81). Although the restraining order recites that the Court considered the report of the Board of Inquiry (R. 82), it is sub-

wholly speculative. Language expressed in the *Wolff Packing Company* case, supra, (p. 542) is here appropriate:

> "Whether such danger exists has not been determined by the legislature, but is determined under the law by a subordinate agency, and on its findings and prophecy, owners and employers are to be deprived of freedom of contract and workers of a most important element of their freedom of labor."

Herein administrative officers, without hearing, were permitted to prophesy and upon such "prophecy", the Court based its findings that the national health and safety would be imperiled. Moreover, when it is considered that injunction may last for a maximum period of eighty days, only averments which in the affidavit relate to the effect on national health and safety of a cessation of production of coal for an eighty-day period are pertinent and of probative and evidentiary value on the issue of imperilment of the national health and safety. None of the affidavits meets this test. The averments in Krug's affidavit is based upon a work stoppage "If permitted to continue" (R. 52); those of Bruce upon "a prolonged" stoppage (R. 56, 58); those of Johnson (R. 70) upon the words "for any considerable time"; those of Smith (R. 73) and Crabtree (R. 78) upon "The continuation of the current work stoppage," and those of Cramer (R. 80) upon "Continuation * * * for an extended period."

Even Krug's affidavit bottoms his estimate of the time for the consumption of then current stockpiles of coal upon

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mitted that that report could be considered only for the purpose of showing that Sections 206-208 had been satisfied, but the matters set forth therein could not be used as a basis for the Court's findings of jurisdictional facts. When Government offered this report in the contempt trial, the Court observed that it was admissible only to show "that the preliminary steps had been taken." (R. 252).

the qualification, "unless additional coal supplies are made available", whereas he expressly asserts in his affidavit that coal is then being produced at the rate of more than two million tons per week. It is noteworthy that calculations in other affidavits do not take into consideration this additional production.

The record upon which the district court issued its temporary restraining order of April 3 is totally devoid of any evidentiary proof that the alleged strike had imperiled, or if permitted to continue, would imperil the national health and safety. In issuing the restraining order, the Court did not "set forth the findings of fact constituting the grounds of its action", as it is required to do under Rule 52 (a) of the Federal Rules of Civil Procedure. Without any supporting evidence the court decreed that "such dispute has resulted in a strike * * *; and that such strike, if permitted to continue, will imperil the national health and safety; and that plaintiff is threatened with irreparable injury for which it has no adequate remedy at law." (R. 84). Further, as above indicated, it made no finding and did not concern itself with the question of whether the petitioners, or either of them, were responsible for the alleged strike, and if so, in what manner.

Not only did the Court violate said Rule 52 (a), but, upon the face of the record, Government did not satisfy the requirements of Section 208 which were essential to vest the Court with jurisdiction and power to enter the restraining order. Therefore the order was void.

Further, Government does not show any injury to private or property interest to warrant jurisdiction in this case. *In re Debs,* 158 U. S. 564, 598, where it is stated:

> "* * * The right of any laborer, or any number of laborers to quit work was not challenged. The scope and purpose of the bill was only to restrain forcible

> obstructions of the highways along which interstate commerce travels and the mails are carried."

The instant case involves no tortious conduct such as the *Debs* case reflected.

The Court of Appeals was of opinion that the National Emergencies provisions were not involved in the contempt proceeding. The error in this view has been hereinbefore demonstrated. With reference to the injunction proceeding itself the Court of Appeals was of opinion that the issues were moot. Discussion of that issue appears hereinafter in a discussion showing that the Court of Appeals erred in dismissing the appeal in case No. 9944.

The trial court held, both in the contempt proceeding (R. 151) and in the preliminary injunction proceedings (R. 160) that the provisions of section 206 to 208 of the Act, and all requirements therein contained, were duly and legally carried out both prior to and in the institution of this action. The foregoing discussion demonstrates the fallacy of the court's conclusions, and sustains petitioners' position that jurisdiction of the trial court did not attach.

VI. There Was No Jurisdiction to Issue the Preliminary Injunction. Its Issuance Was Also Without Supporting Evidence and Contrary to Law

Even if jurisdiction had existed to issue the *ex parte* temporary restraining order, and even though the jurisdictional prerequisites hereinbefore discussed had been established, jurisdiction did not exist to issue the preliminary injunction.

Section 210 of the Act specifically requires that upon "the certification of the results of such ballot or *upon a settlement being reached,* whichever happens sooner, the Attorney General shall move the Court to discharge the injunction, which motion shall then be granted and the injunction

discharged." Prior to the Court's issuance of the preliminary injunction, Petitioners insisted that settlements of the dispute having been fully effected prior to the terminal period for which an injunction might issue under the statute, a mandatory duty rested upon the Attorney General "not to ask for the issuance of a preliminary injunction but to move affirmatively the discharge of the order." (R. 436).

Upon the entire record, it is clear that settlement of the dispute had been fully had and the dispute dissipated, and Petitioners now insist, as they did before the trial court, that the only jurisdiction which the Court had over the matter—if indeed it had any at all—was to dismiss the injunction under the positive mandate of the statute.

The testimony which had been admitted at the hearing on contempt was included on the issue of Government's motion for the preliminary injunction. (R. 396) In addition thereto Government offered, over Petitioners' objection, the testimony of employees of five coal operators' associations (R. 397, *et seq.*), and that of Dr. W. H. Young of the Bureau of Mines. The testimony of said employees showed that of six hundred million tons, representing the annual production of coal, the production represented by the five associations was approximately one hundred sixty millions of tons. Those reported by Dr. Young (Government's Exhibit No. 37) represented approximately nine per cent (R. 426) or fifty-four millions of tons. Of approximately ninety thousand men employed by said five associations, 56,358 of those employees had returned to work on April 20, the day preceding the issuance of the injunction. Government produced no testimony with respect to those companies which had produced the remainder of the six hundred million tons, or in excess of three hundred eighty-four millions of tons. There was no attempt on the part of

Government, and no requirement by the District Court, that Government in any wise should undertake to show in what manner the national health and safety would be imperiled, nor did it concern itself with the return of more than fifty-six thousand of the ninety thousand men represented by the five associations who had returned to work. The alleged strike did not exist, nor was there any showing that the national health or safety was, or would be, imperiled.

In issuing the preliminary injunction on April 21, the District Court found that "the strike on the part of the Union * * * has continued and is in progress on this date, and the said labor dispute continues unresolved." This finding is wholly without competent and substantial evidentiary support, and the trial court erred in so finding; and the Court of Appeals erred in failing to find, as a matter of law, that the trial court had so erred.

The Court of Appeals regarded these issues as moot. That the court erred is demonstrated in the discussion which follows.

VII. The Court of Appeals Erred in Dismissing the Appeal In Case No. 9944 As Moot

The Court of Appeals erred in its opinion that because the temporary restraining order expired by its own terms and the preliminary injunction was discharged by the trial court, the appeal in Case No. 9944 became moot.

The matters which arise, both upon the aforementioned petition and appeal, concern the invalidity of the orders of the District Court entered (1) April 3, 1948, granting the *ex parte* temporary restraining order against Petitioners; (2) April 21, 1948, denying Petitioners' motion filed on April 7, 1948, to dissolve and vacate the temporary restraining order, and (3) April 21, 1948, granting to Government a preliminary injunction.

When it is remembered that the national emergencies provisions are still effective and that Section 208 of the Act is still available to Government to procure again, as it did in the orders herein complained of, a temporary restraining order and a preliminary injunction, and since the validity of such orders could not be determined within the eighty-day duration of an injunction permitted by the challenged national emergencies provisions, such orders are "capable of repetition, yet evading review." See *Southern Pacific Terminal Company* v. *Interstate Commerce Commission,* 219 U. S. 498, 515, wherein the Supreme Court provided a conclusive guide in the following language:

> "In the case at bar the order of the Commission may to some extent * * * be the basis of further proceedings. But there is a broader consideration. The questions involved in the orders of the Interstate Commerce Commission are usually continuing * * * *and their consideration ought not to be, as they might be, defeated, by short term orders, capable of repetition, yet evading review, and at one time the Government, and at another time the carriers have their rights determined by the Commission without a chance of redress.*" (Italics supplied.)

The cogency of the reasoning employed in the above case is readily apparent. Unless this Court determines the constitutional and jurisdictional questions presented in the cases herein and provides juridical guides for the determination of the jurisdictional prerequisites essential to invoking jurisdiction of federal District Courts under the Act, important federal questions, vital to every American workman, are permitted to remain undetermined, and rights guaranteed under the Constitution will continue to be violated. Moreover, such rights could be violated without chance of redress.

In *Walling* v. *Haile Gold Mines*, 136 F. (2d) 102, 105 (C.C.A. 4, 1943), the rule is repeated in language as follows:

> "• • • Nor is a case rendered moot where there is a need for the determination of a question of law to serve as a guide to the public agency which may be called upon to act again in the same manner."

The opinion and judgment of the Court of Appeals are in conflict with an opinion written by Chief Justice Vinson when, as a member of the said Court of Appeals, he stated in *Gay Union Corporation* v. *Wallace*, 112 F. (2d) 192, 71 App. D. C. 382, 1940, cert. denied, (310 U. S. 647), in rejecting Government's contention that the matters arising upon appeal were moot (195):

> "In the present case it is clear that the statute was intended to give an aggrieved person a remedy by appeal to this court, but it is equally clear that after the Secretary has announced his decision, *the time for appeal is wholly inadequate for any effective relief. And it is also true that, unless the rights of the parties under the regulation complained of are determined, the result in the present year will be again to leave appellants without remedy.* We think, in these circumstances, that even though we are without power to grant the specific relief prayed, our duty is to determine the question presented." (Italics supplied.)

VIII. Issuance of the Rule to Show Cause Was in Violation of Rule 42(b), Federal Rules and Criminal Procedure

Rule 42 (b), Federal Rules of Criminal Procedure, provides specifically that "a criminal contempt • • • shall be prosecuted on notice. The notice shall set the time and place of hearing • • • and shall state the essential facts constituting the criminal contempt charged and *describe it as such* • • •." (Italics supplied). Union and Lewis were tried and found guilty of both civil and criminal contempts. The express purpose of said Rule 42(b) was to

obviate the confusion between criminal and civil contempt (*McCann* v. *N. Y. Stock Exchange*, 80 F. (2d) 211) and to effectuate a definite cleavage between the two classes of contempt. Only by a separation of the two classes of contempt may the confusion be eliminated and persons charged with contempt fully protected in their rights. See dissenting opinion of Mr. Justice Rutledge, *U. S.* v. *United Mine Workers of America, supra,* p. 363; see also *Penfield Co.* v. *Securities & Exchange Com., supra.*

Petitioners' motion to dismiss the Rule to Show Cause because it violated said Rule 42(b) was overruled, and the Court of Appeals approved (R. 553) by reason of the ruling in *U. S.* v. *United Mine Workers of America, supra.* Petitioners urge a re-consideration of this issue by this Court.

Further, since Government asserts no property interest, and there is no unlawful conduct involved, it was error to inject the issue of civil contempt into the proceedings. *In re Debs, supra.*

Conclusion

For the reasons hereinabove set forth, it is submitted that the Petition for Writs of Certiorari as prayed for should be granted.

Respectfully submitted,

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APPENDIX

Statutes, Constitutional Provisions and Court Rules Involved

The National Emergencies Provisions of Labor-Management Relations Act, 1947. (29 U.S.C.A. 176-180; Act, June 23, 1947, C. 120, Title II, Sections 206-210, 61 Stat. 155, 156):

Section 206. Whenever in the opinion of the President of the United States, a threatened or actual strike or lock-out affecting an entire industry or a substantial part thereof engaged in trade, commerce, transportation, transmission, or communication among the several States or with foreign nations, or engaged in the production of goods for commerce, will, if permitted to occur or to continue, imperil the national health or safety, he may appoint a board of inquiry to inquire into the issues involved in the dispute and to make a written report to him within such time as he shall prescribe. Such report shall include a statement of the facts with respect to the dispute, including each party's statement of its position but shall not contain any recommendations. The President shall file a copy of such report with the Service and shall make its contents available to the public.

Section 207 (a) A board of inquiry shall be composed of a chairman and such other members as the President shall determine, and shall have power to sit and act in any place within the United States and to conduct such hearings either in public or in private, as it may deem necessary or proper, to ascertain the facts with respect to the causes and circumstances of the dispute.

* * *

Section 208 (a) Upon receiving a report from a board of inquiry the President may direct the Attorney General to petition any district court of the United States having jurisdiction of the parties to enjoin such strike or lock-out or the continuing thereof, and if the court finds that such threatened or actual strike or lock-out:

(i) affects an entire industry or a substantial part thereof engaged in trade, commerce, transportation, transmission,

or communication among the several States or with foreign nations, or engaged in the production of goods for commerce; and

(ii) if permitted to occur or to continue, will imperil the national health or safety, it shall have jurisdiction to enjoin any such strike or lock-out, or the continuing thereof, and to make such other orders as may be appropriate.

(b) In any case, the provisions of the Act of March 23, 1932 entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes", shall not be applicable.

(c) The order or orders of the court shall be subject to review by the appropriate circuit court of appeals and by the Supreme Court upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U.S.C., title 29, secs. 346 and 347).

Section 209 (a) Whenever a district court has issued an order under section 208 enjoining acts or practices which imperil or threaten to imperil the national health or safety, it shall be the duty of the parties to the labor dispute giving rise to such order to make every effort to adjust and settle their differences, with the assistance of the Service created by this Act. Neither party shall be under any duty to accept, in whole or in part, any proposal of settlement made by the Service.

(b) Upon the issuance of such order, the President shall reconvene the board of inquiry which has previously reported with respect to the dispute. At the end of a sixty-day period (unless the dispute has been settled by that time), the board of inquiry shall report to the President the current position of the parties and the efforts which have been made for settlement, and shall include a statement by each party of its position and a statement of the employer's last offer of settlement. The President shall make such report available to the public. The National Labor Relations Board, within the succeeding fifteen days, shall take a secret ballot of the employees of each employer involved in the dispute on the question of whether they

wish to accept the final offer of settlement made by their employer as stated by him and shall certify the results thereof to the Attorney General within five days thereafter.

Section 210. Upon the certification of the results of such ballot or upon a settlement being reached, whichever happens sooner, the Attorney General shall move the court to discharge the injunction, which motion shall then be granted and the injunction discharged. When such motion is granted, the President shall submit to the Congress a full and comprehensive report of the proceedings, including the findings of the board of inquiry and the ballot taken by the National Labor Relations Board, together with such recommendations as he may see fit to make for consideration and appropriate action.

Section 501 (2), Labor Management Relations Act, 1947 (29 U.S.C.A. 142 (2), Act June 23, 1947, C. 120, Title V, Sec. 501 (2), 61 Stat. 161) reads:

> "Sec. 501. When used in this Chapter— * * *
> (2) The term 'strike' includes any strike or other concerted stoppage of work by employees (including a stoppage by reason of the expiration of a collective-bargaining agreement) and any concerted slow-down or other concerted interruption of operations by employees."

Section 502, Labor Management Relations Act, 1947 (29 U.S.C.A. 143, Act June 23, 1947, C. 120, Title V, Sec. 502, 61 Stat. 162) reads:

> "Nothing in this chapter shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this chapter be construed to make the quitting of his labor by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent; * * *."

Constitutional Amendments

The First Amendment to the Constitution of the United States reads, in part, as follows:

"Congress shall make no law • • • abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

The Fifth Amendment to the Constitution of the United States reads, in part, as follows:

"No person shall • • • be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

The Eighth Amendment to the Constitution of the United States reads thus:

"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

The Thirteenth Amendment to the Constitution of the United States provides, in part, as follows:

"Sec. 1—Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

"Sec. 2—Congress shall have power to enforce this article by appropriate legislation."

Article III, Constitution of the United States, reads, in part, as follows:

"Sec. 1—The judicial Power of the United States, shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. • • •"

"Sec. 2—The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made or which shall be made, under their Authority. • • •"

Federal Rules of Civil Procedure

Rule 52(a), Federal Rules of Civil Procedure, as amended, reads:

> "In all actions tried upon the facts without a jury • • • the court shall find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. • • •"

Rule 65(b), Federal Rules of Civil Procedure, as amended, reads:

> "No temporary restraining order shall be granted without notice to the adverse party unless it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before notice can be served and a hearing had thereon. • • • On 2 days' notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move its dissolution or modification and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require."

INDEX

CASES CITED

	PAGE
Aetna Life Insurance Co. v. Haworth, 300 U. S. 227	3
Allen Bradley Co. v. Local Union No. 3, 325 U. S. 797	5
Anderson v. Dunn, 6 Wheat. 204, 231, 5 L. ed. 242	8
Apex Hosiery Co. v. Leader, 310 U. S. 469	5
Baumgartner v. U. S. A., 322 U. S. 665	8
Dorchy v. Kansas, 272 U. S. 306, 311	4
Ford Motor Co. v. U. S., 335 U. S. 313, 69 S. Ct. 93, 98	9
Gompers v. Buck's Stove and Range Co., 221 U. S. 418, 450	3
Howat v. Kansas, 258 U. S. 181	3
Huffman v. U. S., 10 Cir., 148 F. 2d. 993, 944	8
In Matter of Michael, 326 U. S. 224	7
In re Debs, 158 U. S. 564	6
Moore v. U. S., 10 Cir., 150 F. 2d 323	8
Mortensen v. United States, 322 U. S. 369	7
Muskrat v. United States, 219 U. S. 346, 357	3
Postum Cereal Co. v. California Fig-Nut Co., 272 U. S. 692	3
Securities & Exchange Commission v. Okin, 2 Cir., 137 F. 2d 862	8
Southern Pacific Terminal Co. v. Interstate Commerce Com., 219 U. S. 498, 515	9

PAGE

Texas and N. O. R. Co. v. Bro. of Railway Clerks, 281 U. S. 548, 565-7 5

Thomas v. Collins, 323 U. S. 516 3

United Automobile Workers v. Wisconsin Employment Relations Board, 336 U. S. 245 4

United States v. Hutcheson, 312 U. S. 219 5

United States v. Petrillo, 332 U. S. 1 5

United States v. Shipp, 203 U. S. 563 3

United States v. Socony-Vacuum Oil Co., 310 U. S. 150, 254 7

United States v. United Mine Workers, 330 U. S. 258 ..... 2, 6, 8

Worden v. Searls, 121 U. S. 14 4

CONSTITUTIONAL PROVISIONS CITED

Article III, Constitution of United States 2

Eight Amendment, Constitution of United States 8

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 168

INTERNATIONAL UNION, UNITED MINE WORKERS OF AMERICA, and JOHN L. LEWIS, as President, International Union, United Mine Workers of America, *Petitioners,*

vs.

THE UNITED STATES OF AMERICA.

No. 169

INTERNATIONAL UNION, UNITED MINE WORKERS OF AMERICA, and JOHN L. LEWIS, as President, International Union, United Mine Workers of America, and as Union Representative Trustee, Board of Trustees, United Mine Workers of America Welfare and Retirement Fund, *Petitioners,*

vs.

THE UNITED STATES OF AMERICA.

PETITIONERS' REPLY BRIEF IN SUPPORT OF PETITION FOR WRITS OF CERTIORARI

Government, in its brief in opposition to the petition for writs of certiorari, has not met petitioners' arguments in support of said petition. These matters are covered in petitioners' petition brief. Petitioners do not concur with Government that the Court need only consider the questions listed on page 2 of Government's brief. Mindful of the functions

of a reply brief, we shall herein answer briefly certain of Government's assertions in respect of which further explanation is not repetitious. The points as numbered herein correspond to those as numbered in Government's brief.

ARGUMENT

Government's opposition to the petition for writs of certiorari is predicated, in the main, upon its erroneous contention that the principal questions presented by the petition were decided in *United States* v. *United Mine Workers*, 330 U. S. 258. Distinctions between that case and the instant one are demonstrated in petitioners' original brief (p. 72). Government's brief offers no answer thereto.

1.

a. Government errs when it characterizes the temporary restraining order as merely "erroneous": it is *void*. The District Court did not, and could not, acquire jurisdiction in this case, and Government has not undertaken to show how such jurisdiction existed. In instituting its suit, Government relied upon Section 208 of the Labor Management Relations Act, 1947, (R. 7). Those statutory provisions were void because they attempted to vest in district courts a jurisdiction which collided with fundamental rights guaranteed by the Constitution. Further, in enacting such provisions, Congress attempted, in violation of Article III of the Federal Constitution, to vest such courts with nonjudicial functions; it attempted to empower them to act in proceedings which do not partake of a case or controversy in the constitutional sense, to which judicial

power is constitutionally confined (*Muskrat* v. *United States*, 219 U. S. 346, 357); and it further attempted to entrust to such courts proceedings which involved no finality of decision and no finality or conclusive determination of facts and of legal issues; but, in lieu thereof, it has provided merely for decrees effective for an eighty-day period. *Postum Cereal Co.* v. *California Fig-Nut Co.*, 272 U. S. 692; *Aetna Life Insurance Co.* v. *Haworth*, 300 U. S. 227. Jurisdiction and power granted federal district courts by congressional enactment but prohibited by the Constitution could produce only an abortive decree or order.

The temporary restraining order was responsive to the statutory provisions, and it, like the statutory provisions, conflicted with fundamental rights guaranteed by the Constitution and was, therefore, void. In *Thomas* v. *Collins*, 323 U. S. 516 (1945), Thomas had refused to comply with a court order enjoining him from soliciting Union memberships without first obtaining an organizer's card, as required by a Texas statute. Thomas was not required to obey the court's order and contest it on appeal. Instead the Supreme Court, finding that the statute contravened the Constitution, said that Thomas had one of three choices, one of which was to stand on his rights and speak freely, and thereof the Court held: "We think he was within his rights in doing so." Furthermore, the order in the instant case was void because jurisdictional prerequisites were lacking. Cases cited by Government to sustain the validity of the restraining order (p. 9) are not apposite. The irrelevancy of *Howat* v. *Kansas*, 258 U. S. 181, is discussed in petitioners' original brief (p. 73). Neither *United States* v. *Shipp*, 203 U. S. 563; *Gompers* v. *Buck's*

Stove and Range Co., 221 U. S. 418, 450; nor *Worden* v. *Searls*, 121 U. S. 14, was concerned with the exercise of a jurisdiction prohibited by the Constitution, nor with orders requiring obedience by alleged contemnors to conduct, ordered by the alleged contemned tribunal, which infringed fundamental rights guaranteed by the Constitution.

Government fails to distinguish between the regulation of the right to strike and the absolute denial thereof. It ignores the issues that the powers of Congress and the judiciary are not absolute under the federal constitution and that Congress and the federal district court have acted beyond the limits of their functions, constitutionally granted. It errs when it asserts (p. 10) that the injunction provisions of said Act are "for the regulation of strikes", when, in fact, for the number of days specified in the statutory provisions the right to strike is denied absolutely. Petitioners noted in their original brief (p. 57) the statement in *Dorchy* v. *Kansas*, 272 U. S. 306, 311, that the right to strike is not absolute, but therein petitioners asserted that intrustion of that right must be tested in the distinction *between dealing with the abuse* and *the curtailment of the right itself*. *United Automobile Workers* v. *Wisconsin Employment Relations Board*, 336 U. S. 245, cited by Government (p. 10), involved provisions of the Wisconsin Employment Peace Act, which made it an unfair labor practice for an employee individually or in concert with others "to engage in any concerted effort to interfere with production, *except by leaving the premises in an orderly manner for the purpose of going on strike*" (Italics supplied). The *right* to strike was recognized and preserved by the Wisconsin statute. Neither the majority of the Supreme Court of the United States, nor the Union, regarded the work stoppages as

"a strike" (opinion, note 17). The decision in that case concerned the right of the State of Wisconsin to police the *method* employed in the concerted effort of employees.

Nor do the other cases cited by Government (p. 10), involve the absolute denial of the right to strike. *Apex Hosiery Co.* v. *Leader*, 310 U. S. 469; *United States* v. *Hutcheson*, 312 U. S. 219; and *Allen Bradley Co.* v. *Local Union No. 3*, 325 U. S. 797, each involved alleged conduct allegedly proscribed by the Sherman Anti-Trust Act and by it declared illegal. In the first two of such cases, the Supreme Court refused to regard the strike activities of the Unions involved in said cases as violative of the Sherman Anti-Trust Act; while in the *Allen Bradley* case the Court enjoined only those prohibited activities in which the Union engaged in combination with any person, firm or corporation which is a non-labor group. In *United States* v. *Petrillo*, 332 U. S. 1, (1946) the Court held that the First and Thirteenth Amendments questions were prematurely raised, and that such questions rooted in the information rather than upon the face of the statute. Readily distinguishable is the statute in the *Petrillo* case from the instant one wherein denial of constitutional rights is inherent in the language of Section 208 of the Act.

Nor is there any relevancy in the citation of *Texas and N. O. R. Co.* v. *Brotherhood of Railway Clerks*, 281 U. S. 548, 565-7 (Government's brief, p. 10) to the issues in the instant case. Therein the Railway Labor Act of 1926 provided for voluntary arbitration between carriers and labor organizations in labor disputes. The award made pursuant to arbitration was rendered conclusive as to the merits and facts of the controversy, as well as enforceable. The

Brotherhood's proceedings sought to enjoin the defendants from interfering with, influencing or coercing the clerical employees of the Railroad Company in the matter of their organization and designation of representatives for the purposes set forth in the Act. The right to strike was not in issue, and the statute was aimed "at the interference with the right of employees to have representatives of their own choosing"; and as the Court stated (p. 571):

> "As the carriers subject to the Act have no constitutional right to interfere with the freedom of the employees in making their selection, they cannot complain of the statute on constitutional grounds."

In *In re Debs*, 158 U. S. 564, cited by Government, the following pertinent language is found in the opinion (p. 598):

> "* * * *The right of any laborer, or any number of laborers to quit work was not challenged. The scope and purpose of the bill was only to restrain forcible obstructions of the highways* along which interstate commerce travels and the mails are carried." (Italics supplied).

As above noted, *United States* v. *United Mine Workers*, 330 U. S. 258, is not controlling of the issues herein. Therein, the Supreme Court specified the manner of full compliance: (1) unconditional withdrawal of the notice to Secretary of Interior Krug of the termination of the Krug-Lewis agreement, (2) notice of such withdrawal to Union members, and (3) withdrawing and instructing Union members of the withdrawal of any other notice to the effect that the "Krug-Lewis agreement is not in full force and effect until the final determination of the basic issues arising under the said agreement". (p. 305). In addition to

infringing upon other constitutional rights, in the instant case, the district court ordered that the Union "forthwith instructs members employed in said mines to cease the said strike and immediately to return to their employment"; and the same court declared that if the national health and safety "was imperiled by the walkout they [the miners] would have to go back to the mines." (R. 361). Petitioners insist that the district court could not constitutionally be granted, nor assume, a jurisdiction to order conduct wholly in violation of the Constitution, and that therefore obedience to the temporary restraining order could not be required. The validity of the injunction provisions of the Labor-Management Relations Act, 1947, the temporary restraining order and the preliminary injunction, is relevant in the instant case.

b. Government's position that the writ of certiorari will not issue to review the evidence or the inferences drawn from it, in the instant case, is countered by *United States* v. *Socony-Vacuum Oil Co.*, 310 U. S. 150, 254, wherein it is stated:

> "A question of law is thus raised, which entails an examination of the record, not for the purpose of weighing the evidence but only to ascertain whether there was some competent and substantial evidence before the jury fairly tending to sustain the verdict."

See also *Mortensen* v. *U. S.*, 322 U. S. 369; *In Matter of Michael*, 326 U. S. 224.

Petitioners assert that the record shows no wilful and deliberate disobedience and violation of the restraining order, and that, as a matter of law, under the evidence in

the record, petitioners were not guilty of criminal contempt. Furthermore, the conclusions of law of both lower courts are contrary to applicable principles of law.

Government's reliance upon cases cited in support of its contention that concurrence by both lower courts in the findings are final is negated by *Baumgartner* v. *United States of America*, 322 U. S. 665, holding that:

> "The rule that the concurrent findings of two lower courts are persuasive proof in support of their judgments does not relieve the Supreme Court of the United States of the task of examining the foundation for findings in a particular case."

c. Petitioners disagree with Government's argument (p. 11) that no question for review is presented by the amounts of the fines imposed. The record shows no basis, either in law or in fact, for holding petitioners guilty of criminal contempt. *Matter of Michael*, 326 U. S. 224; *Anderson* v. *Dunn*, 6 Wheat. 204, 231, 5 L. ed. 242. But even though the Court is of opinion that petitioners were guilty thereof, the fines were in violation of the Eighth Amendment to the Constitution, and under the facts and circumstances shown in the record and discussed in petitioners' original brief (pp. 88-101), the fines are excessive, arbitrary and clearly erroneous, and represent an abuse of judicial discretion. Federal appellate courts have recognized that punishments imposed in contempt proceedings are reviewable. *Moore* v. *U. S.*, 10 Cir. 150 F. 2d 323 (1945); *Huffman* v. *U. S.*, 10 Cir., 148 F. 2d 943, 944; *Securities & Exchange Commission* v. *Okin*, 2 Cir., 137 F. 2d 862 (1943). In *United States* v. *United Mine Workers*, *supra*, the Supreme Court reviewed and modified the fines imposed by the district court. Even though the Court is

of opinion that petitioners were guilty as charged, the fines, nevertheless, should not stand.

2.

In petitioners' brief (p. 109) reference is made to *Southern Pacific Terminal Co.* v. *Interstate Commerce Commission*, 219 U. S. 498, 515, in support of the contention that the Court of Appeals erred in dismissing the appeal in Case No. 9944 as moot. Approval of the principle therein enunciated appears in the recent case, decided November 15, 1948, of *Ford Motor Co.* v. *U. S.*, 335 U. S. 313, 69 S. Ct. 93, 98.

CONCLUSION

For the reasons set forth and discussed in petitioners' original brief and in this reply brief, it is submitted that the petitions for writs of certiorari, as prayed for, should be granted.

Respectfully submitted,

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INDEX

	Page
Opinions below	1
Jurisdiction	2
Questions presented	2
Statutory provisions involved	3
Statement	3
Argument	8
Conclusion	14

CITATIONS

Cases:

Alabama Power Co. v. *Ickes*, 302 U. S. 464	11
Apex Hosiery Co. v. *Leader*, 310 U. S. 469	10
Allen Bradley Co. v. *Local Union No. 3*, 325 U. S. 797	10
Brotherhood of Locomotive Engineers, etc. v. *United States*, No. 182, October Term, 1949	13
Comstock v. *Group of Investors*, 335 U. S. 211	11
Debs, In re, 158 U. S. 564	10
Dorchy v. *Kansas*, 272 U. S. 306	10
General Pictures Co. v. *Electric Co.*, 304 U. S. 175	11
Gompers v. *Buck's Stove and Range Co.*, 221 U. S. 418	9
Howat v. *Kansas*, 258 U. S. 181	9
Montgomery Ward & Co., Inc. v. *United States*, 326 U. S. 690	13
Southern Power Co. v. *N. C. Public Service Co.*, 263 U. S. 508	11
Texas & New Orleans R. Co. v. *Brotherhood of Railway Clerks*, 281 U. S. 548	10
Trainmen v. *Toledo, P. & W. R. Co.*, 321 U. S. 50	10
United Automobile Workers v. *Wisconsin Employment* Board, 336 U. S. 245	10
United States v. *Chemical Foundation*, 272 U. S. 1	11
United States v. *Hutcheson*, 312 U. S. 219	10
United States v. *Johnston*, 268 U. S. 220	11
United States v. *McGowan*, 290 U. S. 592	11
United States v. *Petrillo*, 332 U. S. 1	10
United States v. *Shipp*, 203 U. S. 563	9
United States v. *United Mine Workers*, 330 U. S. 258,	7, 8, 9, 12
Worden v. *Searls*, 121 U. S. 14	9

Statute:

Labor Management Relations Act, 1947 (Act of June 23, 1947, c. 120, 61 Stat. 136, 29 U. S. C. 176-178):

Section 206	14
Section 207	14
Section 208	3, 9, 15
Section 209	15
Section 210	16
Section 501	17
Section 502	17

In the Supreme Court of the United States

OCTOBER TERM, 1949

No. 168

INTERNATIONAL UNION, UNITED MINE WORKERS OF AMERICA, and JOHN L. LEWIS, as President, International Union, United Mine Workers of America, PETITIONERS

v.

THE UNITED STATES OF AMERICA

No. 169

INTERNATIONAL UNION, UNITED MINE WORKERS OF AMERICA, and JOHN L. LEWIS, as President, International Union, United Mine Workers of America, and as Union Representative Trustee, Board of Trustees, United Mine Workers of America Welfare and Retirement Fund, PETITIONERS

v.

THE UNITED STATES OF AMERICA

ON PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The district court filed no opinion; its findings of fact and conclusions of law appear in the record at pp. 142 to 152. The opinion of the Court

of Appeals for the District of Columbia (R. 544-553) has not yet been reported.

JURISDICTION

The judgments of the Court of Appeals were entered June 6, 1949 (R. 554, 555). The petition for writs of certiorari was filed July 6, 1949. The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

QUESTIONS PRESENTED

Despite the extended list of questions presented in the petition we believe the Court need only consider the following in determining whether the judgments below call for review by this Court:

1. Whether petitioners were required to comply with the temporary restraining order of the district court pending ultimate determination of the legal issues involved notwithstanding the assertion of the unconstitutionality of the statute under which the Government was proceeding.

2. Whether factual determinations, concurred in by both courts below, are proper subjects of review by this Court.

3. Whether the fines imposed by the district court exceeded the bounds of its discretion or violated the Eighth Amendment.

4. Whether the expiration of the temporary restraining order by its terms and the dissolution of the preliminary injunction, after settlement of

the underlying labor dispute and cessation of the strike, rendered moot the controversy with respect to the validity of their issuance.

STATUTORY PROVISIONS INVOLVED

The pertinent statutory provisions are set forth in the appendix.

STATEMENT

The United States brought suit under Section 208 of the Labor Management Relations Act, 1947 (Act of June 23, 1947, c. 120, 61 Stat. 136, 155, 29 U. S. C. 178) to enjoin petitioners from continuing and to terminate a strike in the bituminous coal industry then in progress (R. 4-16). A temporary restraining order was issued with which petitioners failed to comply (R. 81-87, 148). Petitioners were then required to show cause why they should not be punished in criminal and civil contempt (R. 123-124). After notice and hearing petitioners were adjudged guilty of both civil and criminal contempt and fines were imposed for the criminal contempt in the amount of $20,000 upon John L. Lewis and of $1,400,000 upon the United Mine Workers (R. 149, 151-153). No further proceedings were had with respect to the civil contempt (R. 181, 182, 183, 204). Subsequently a preliminary injunction was granted (R. 158). Appeals were taken from the orders granting the temporary restraining order and the preliminary injunction and from the judgments finding petitioners guilty of criminal contempt and sentencing them to pay fines (R. 545). The judgments

holding petitioners guilty of criminal contempt and imposing fines were affirmed; the appeal relating to the granting of the temporary restraining order and the preliminary injunction was dismissed as moot (R. 553, 554, 555).

The National Bituminous Coal Wage Agreement of 1947 provided for the establishment of a fund to be administered by three trustees, one representing the union, one representing the operators, and the third a neutral trustee (R. 22, 23). There had been disagreement with respect to the establishment of the fund and on January 16, 1948, Thomas E. Murray, the neutral trustee, resigned (R. 13, 170). After some fruitless correspondence with individual signatories to the agreement, on February 2, John L. Lewis wrote to all signatories advising them that the union "reserves the right at will to take any independent action necessary to the enforcement of the contract" (R. 98, 101). On March 12, in a letter to the officers and members of all local unions in all bituminous districts of the United States, Lewis outlined the course of the dispute, stated that the coal operators "have dishonored the 1947 Wage Agreement," and advised them of the union's intention "to go forward in requiring the coal operators to honor their agreement" (R. 102-103, 149-150). The purpose and effect of this letter was to cause a strike (R. 150). On March 15 a concerted work stoppage of miners in every section of the nation commenced (R. 150). Approximately 87 per cent of all bitum-

inous coal miners are members of the United Mine Workers and within a period of seven days following March 12 production of bituminous coal decreased by more than 80 per cent (R. 264, 546).

On March 23, 1948, the President, pursuant to Section 206 of the Labor Management Relations Act, established a Board of Inquiry to inquire into the issues involved in the labor dispute (R. 142). In its written report to the President made on March 31, the Board found that the action taken by the president of the union induced the work stoppage and that the stoppage had precipitated a crisis in the industry and in the nation as a whole (R. 547). Pursuant to Section 208 of the Act, the President directed the Attorney General to sue to enjoin the strike (R. 143). Section 208(a) authorizes the district courts of the United States to enjoin a threatened or actual strike or lockout, upon the petition of the Attorney General, if the court finds that it affects an interstate industry entirely or in substantial part and will imperil the national health or safety. During the life of the injunction, which may not continue for longer than 80 days, the parties are required to make every effort to settle their dispute. Sections 209 and 210.

The complaint filed on April 3 alleged, among other things, that continuation of the existing strike would imperil the national health and safety and incorporated the Board's report and affidavits of numerous government officials familiar with

the facts supporting this allegation (R. 12, 50-81). The same day a temporary restraining order was issued which, pending further order of the court, "hereby restrained" continuation of the strike and further ordered petitioners to "forthwith instruct" all members of the union to return to work (R. 81, 85). This order expired by its terms on April 13 and was subsequently extended to April 23 (R. 138-139). A copy of the restraining order was served on the union and John L. Lewis on April 5 (R. 145-146).

On April 7 the United States filed a petition for a rule to show cause why petitioners should not be punished for civil and criminal contempt on the ground that they had violated the terms of the temporary restraining order by taking no action to end the strike and by permitting and encouraging the continuation of the strike (R. 116, 146). On April 12, the return day, the court found that the alleged contempts had not been sufficiently purged and ordered the cause set down for trial on April 14 (R. 148). No communications had been sent by the union to its members after April 3 instructing them to return to their employment until April 12 (R. 336-339). On this day, only after agreement had been reached on the appointment of a neutral trustee and upon a basis for settlement of the dispute, two messages were dispatched to union officials throughout the country which informed them that "The agreement is now honored" and "officially advised" the miners to

"return to your usual employment upon receipt of this telegram" (R. 147-148). The district court thus concluded that petitioners had violated the terms of the temporary restraining order, adjudged them guilty of criminal and civil contempt, and imposed fines for criminal contempt of $20,000 upon Lewis and $1,400,000 upon the union (R. 149, 151-152, 153).

After hearings on the issuance of a preliminary injunction, the district court found that a strike continued to exist and that the national welfare and safety were involved, and granted a preliminary injunction on April 21 (R. 158-165). On June 23, upon application of the United States and a showing that normal production of bituminous coal had previously been re-established, the injunction was discharged by the district court (R. 199-203, 204).

The court below declined to pass upon the substantive issues raised as to the validity and applicability of the statute, ruling that under *United States* v. *United Mine Workers,* 330 U. S. 258, the petitioners were required to obey the district court's temporary restraining order until it could determine its authority in the dispute, that the evidence showed conclusively that they made no attempt to comply with the order, and that their defiance of that order was punishable as a criminal contempt (R. 553). It held that in view of the fines imposed for similar offenses just a year before, those in the instant case were not excessive and,

accordingly, affirmed the judgments in the contempt proceeding (R. 553). It held further that the "temporary restraining order expired by its own terms, and the preliminary injunction was discharged by the trial court" and therefore dismissed the appeal with respect to these orders as moot (R. 553).

ARGUMENT

The principal questions presented by the petition in this case were raised and decided in *United States* v. *United Mine Workers,* 330 U. S. 258. No questions necessary to a decision in this case are presented which have not been definitively disposed of by this Court's decision in that case or other cases. There is, therefore, no occasion to review the judgments of the court below.

The judgments which petitioners attempt to bring before this Court for review involve (1) affirmance of the district court's adjudication and fine for criminal contempt, and (2) dismissal of the appeal relating to the granting of the temporary restraining order and the preliminary injunction.

1. With respect to the contempt adjudication petitioners urge, among other things, that the provision of the Labor Management Act under which an injunction was sought is unconstitutional and, therefore, that the temporary restraining order did not have to be obeyed, that the evidence did not support the contempt adjudication, and that

the fines imposed were contrary to law and excessive.

a. The judgments holding petitioners guilty of criminal contempt were entirely correct regardless of the constitutionality of Section 208 of the Labor Management Relations Act. The question of the constitutional validity of Section 208 is relevant to the adjudication for contempt only if petitioners were free to disregard an erroneous temporary restraining order. But this precise question was answered against petitioners in the *United Mine Workers* case when this Court held, in almost identical circumstances, that, even if erroneously issued, "an order issued by a court with jurisdiction over the subject matter and person must be obeyed by the parties until it is reversed by orderly and proper proceedings" and that disobedience of such an order is punishable as contempt. 330 U. S. at 293. The restraining order was challenged on constitutional grounds in that case, as here, with the same rule held applicable. See also *Howat* v. *Kansas,* 258 U. S. 181; *United States* v. *Shipp,* 203 U. S. 563; *Gompers* v. *Buck's Stove and Range Co.,* 221 U. S. 418, 450; *Worden* v. *Searls,* 121 U. S. 14.

Admittedly, if the exercise of jurisdiction amounted to the usurpation of authority clearly denied, obedience to an order is not compelled. But no claim of a frivolous assumption of jurisdiction can seriously be asserted here. The argument

against jurisdiction rests essentially on the contention that the provisions in the Act for the regulation of strikes which threaten to imperil the national health or safety are unconstitutional because the Constitution guarantees an unqualified right to strike. It is unnecessary to consider at length the merits of this question, in the light of the many pertinent decisions of this Court, to establish that there was considerably more than an adequate basis for the district court to exercise jurisdiction. The very decision in the *United Mine Workers* case recognizes the existence of circumstances in which strikes may be enjoined. This is but one of many occasions on which this Court by its language or decision has made clear that the right to strike is not absolute. See *United Automobile Workers* v. *Wisconsin Employment Board,* 336 U. S. 245, 259-260, 261; *Dorchy* v. *Kansas,* 272 U. S. 306, 311; *Apex Hosiery Co.* v. *Leader,* 310 U. S. 469, 488; *United States* v. *Hutcheson,* 312 U. S. 219, 232; *Allen Bradley Co.* v. *Local Union No. 3,* 325 U. S. 797; *United States* v. *Petrillo,* 332 U. S. 1; *In re Debs,* 158 U. S. 564; *Trainmen* v. *Toledo, P. & W. R. Co.,* 321 U. S. 50, 58-59, 63; *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks,* 281 U. S. 548, 565-567. In the *Texas & New Orleans R. Co.* case, which involved the Railway Labor Act and "cooling-off" provisions comparable to those involved here, the Court inferred a limitation on the right to strike and clearly assumed the validity of this limitation. It

is apparent, therefore, that there was no such clear invasion of a constitutional right as to render the exercise of jurisdiction by the district court a usurpation of power. Consequently, the deliberate refusal to obey the mandate of the temporary restraining order was properly adjudicated a criminal contempt.

b. No valid basis is presented for having this Court review the factual basis of the conviction for criminal contempt. A writ of certiorari will not issue to review the evidence or the inferences drawn from it. *General Pictures Co.* v. *Electric Co.,* 304 U. S. 175, 178; *United States* v. *Johnston,* 268 U. S. 220, 227; *Southern Power Co.* v. *N. C. Public Service Co.,* 263 U. S. 508. Moreover, the findings have been concurred in by both lower courts and therefore are final "in the absence of very exceptional showing of error". *Comstock* v. *Group of Investors,* 335 U. S. 211, 213-214; *General Pictures Co.* v. *Electric Co.,* 304 U. S. 175, 178; *United States* v. *Chemical Foundation,* 272 U. S. 1, 14; *United States* v. *McGowan,* 290 U. S. 592; *Alabama Power Co.* v. *Ickes,* 302 U. S. 464. The clear support for the findings is demonstrated in the summary delineation in the opinion of the court below of the undisputed evidentiary facts (R. 545-551).

c. Similarly, no question for review is presented by the amounts of the fines imposed. When this Court considered the amount of the fines for crimi-

nal contempt imposed upon petitioners just one year before the present contempt, it pointed out that "great reliance must be placed upon the discretion of the trial judge." 330 U. S. at 303. In the instant case the district court found as a fact that petitioners "beyond a reasonable doubt, wilfully, wrongfully and deliberately disobeyed and violated" its temporary restraining order (R. 149) and levied fines exactly twice the amount of those approved by this Court in the earlier suit. These fines were upheld by the court below as "not excessive" (R. 553). In view of the renewal of petitioners' contemptuous conduct fresh upon the validation of their previous conviction, doubling of the penalties previously approved was not an abuse of discretion and no error was committed in affirmance by the court below.

2. Since the question of the validity of the temporary restraining order and the preliminary injunction is not relevant to the contempt issue for the reasons already discussed, the court below properly dismissed as moot the appeal involving this question. The temporary restraining order expired by its own terms (R. 138). The preliminary injunction was discharged, on the Government's motion, when it appeared that the subject of the dispute had been settled, that the strike had ended, and that there was no longer any threat of a strike (R. 199-203, 204). Discharge of the injunction relieved petitioners of all restraint and there was

no further relief that the court below was able to afford. Since there was no subject matter upon which a judgment could operate, it is apparent that petitioners sought the determination of an abstract question. The appeal, therefore, was properly held moot. *Montgomery Ward & Co., Inc.* v. *United States,* 326 U. S. 690. See also Brief of the United States in Opposition in *Brotherhood of Locomotive Engineers, etc.* v. *United States,* No. 182, this Term.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for writs of certiorari should be denied.

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AUGUST 1949.

APPENDIX

The pertinent provisions of the Labor Management Relations Act, 1947 (Act of June 23, 1947, 61 Stat. 136) provide as follows:

> Section 206. Whenever in the opinion of the President of the United States, a threatened or actual strike or lock-out affecting an entire industry or a substantial part thereof engaged in trade, commerce, transportation, transmission, or communication among the several States or with foreign nations, or engaged in the production of goods for commerce, will, if permitted to occur or to continue, imperil the national health or safety, he may appoint a board of inquiry to inquire into the issues involved in the dispute and to make a written report to him within such time as he shall prescribe. Such report shall include a statement of the facts with respect to the dispute, including each party's statement of its position but shall not contain any recommendations. The President shall file a copy of such report with the Service and shall make its contents available to the public. [29 U. S. C., Supp. II, 176.]
>
> Section 207. (a) A board of inquiry shall be composed of a chairman and such other members as the President shall determine, and shall have power to sit and act in any place within the United States and to conduct such hearings either in public or in private, as it may deem necessary or proper, to ascertain the facts with respect to the causes and circumstances of the dispute. [29 U. S. C., Supp. II, 177.]

* * * * *

Section 208. (a) Upon receiving a report from a board of inquiry the President may direct the Attorney General to petition any district court of the United States having jurisdiction of the parties to enjoin such strike or lock-out or the continuing thereof, and if the court finds that such threatened or actual strike or lock-out—

(i) affects an entire industry or a substantial part thereof engaged in trade, commerce, transportation, transmission, or communication among the several States or with foreign nations, or engaged in the production of goods for commerce; and

(ii) if permitted to occur or to continue, will imperil the national health or safety, it shall have jurisdiction to enjoin any such strike or lock-out, or the continuing thereof, and to make such other orders as may be appropriate.

(b) In any case, the provisions of the Act of March 23, 1932, entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes", shall not be applicable.

(c) The order or orders of the court shall be subject to review by the appropriate circuit court of appeals and by the Supreme Court upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 29, secs. 346 and 347). [29 U. S. C., Supp. II, 178.]

Section 209. (a) Whenever a district court has issued an order under section 208 enjoining acts or practices which imperil or threaten to imperil the national health or safety, it shall be the duty of the parties to the labor dispute giving rise to such order to make every effort to adjust and settle their differences, with the assistance of the Service created by this Act. Neither party shall be under any duty to accept, in whole or in part, any proposal of settlement made by the Service.

(b) Upon the issuance of such order, the President shall reconvene the board of inquiry which has previously reported with respect to the dispute. At the end of a sixty-day period (unless the dispute has been settled by that time), the board of inquiry shall report to the President the current position of the parties and the efforts which have been made for settlement, and shall include a statement by each party of its position and a statement of the employer's last offer of settlement. The President shall make such report available to the public. The National Labor Relations Board, within the succeeding fifteen days, shall take a secret ballot of the employees of each employer involved in the dispute on the question of whether they wish to accept the final offer of settlement made by their employer as stated by him and shall certify the results thereof to the Attorney General within five days thereafter. [29 U. S. C., Supp. II, 179.]

Section 210. Upon the certification of the results of such ballot or upon a settlement being reached, whichever happens sooner, the Attorney General shall move the court to discharge the injunction, which motion shall then be granted and the injunction discharged. When such motion is granted, the President shall submit to the Congress a full and comprehensive report of the proceedings, including the findings of the board of inquiry and the ballot taken by the National Labor Relations Board, together with such recommendations as he may see fit to make for consideration and appropriate action. [29 U. S. C., Supp. II, 180.]

Sec. 501. When used in this Act— * * *

(2) The term "strike" includes any strike or other concerted stoppage of work by employees (including a stoppage by reason of the expiration of a collective-bargaining agreement) and any concerted slow-down or other concerted interruption of operations by employees. [29 U. S. C., Supp. II, 142(2).]

Sec. 502. Nothing in this Act shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this Act be construed to make the quitting of his labor by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent; * * *. [29 U. S. C., Supp. II, 143.]

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IN THE

Supreme Court of the United States

October Term, 1949

No. 168

INTERNATIONAL UNION, UNITED MINE WORKERS OF AMERICA and JOHN L. LEWIS, as President, International Union, United Mine Workers of America,

Petitioners

v.

THE UNITED STATES OF AMERICA

No. 169

INTERNATIONAL UNION, UNITED MINE WORKERS OF AMERICA, and JOHN L. LEWIS, as President, International Union, United Mine Workers of America, and as Union Representative Trustee, Board of Trustees, United Mine Workers of America Welfare and Retirement Fund,

Petitioners

v.

THE UNITED STATES OF AMERICA

On Petition for Writs of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

BRIEF FOR THE CONGRESS OF INDUSTRIAL ORGANIZATIONS AS AMICUS CURIAE IN SUPPORT OF THE PETITION FOR CERTIORARI

ARTHUR J. GOLDBERG
General Counsel
THOMAS E. HARRIS
Assistant General Counsel

INDEX

Interest of the Congress of Industrial Organizations 1

Questions Presented 1

Statement 2

Reasons for Granting the Writ 3

Conclusion 8

TABLE OF CASES CITED

Dorchy v. *Kansas*, 264 U. S. 286, 290 6

Douds v. *Retail Stores Union*, 170 F. (2d) 695 (C.C.A. 2, 1948) 5

Federal Radio Commission v. *General Electric Company*, 281 U S. 464 ..... 4, 6

Gordon v. *United States*, 117 U. S. 697 4

Hayburn's case, 2 Dall. 409, 13 How. 52 4

Interstate Commerce Commission v. *Brimson*, 154 U. S. 447 4

Keller v. *Potomac Electric Power Company*, 261 U. S. 428 5

Postum Cereal Company v. *California Fig Nut Company*, 272 U. S. 693 5

Railroad Retirement Board v. *Alton R. Co.*, 295 U. S. 330 6

In re Sanborn, 148 U. S. 222 4

Scripps-Howard Radio v. *Federal Communications Commission*, 316 U. S. 4 7

United States v. *Ferreira*, 13 How. 40 4

United States v. *United Mine Workers*, 330 U. S. 258 3

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INTEREST OF THE CONGRESS OF INDUSTRIAL ORGANIZATIONS

In these cases the Court of Appeals has decided questions of great importance to all labor organizations in a way adverse to the interests of those organizations. It is for that reason that the Congress of Industrial Organizations joins the United Mine Workers of America in asking this Court to review the decision.

QUESTIONS PRESENTED

We agree with petitioners that the entire case, encompassing the numerous questions set forth in the petition, merits review

by this Court. However, the following relatively narrow issues seem to us especially to warrant review:

1. Whether petitioners, United Mine Workers and John L. Lewis, were required, on pain of contempt, to comply with the temporary restraining order of the District Court directing them to cause the miners to return to work, without regard to the correctness of petitioners' contentions (1) that the order of the District Court amounted to naked usurpation of power, because petitioners had not caused the work stoppage; and (2) that the District Court had no jurisdiction over the subject matter of the action because the statute purporting to confer jurisdiction violates Article III of the Constitution.

2. Whether the Court of Appeals properly dismissed the appeal from the orders granting a temporary restraining order and a preliminary injunction, on the ground that their dissolution rendered the appeal moot, when injunctions of this type issued under the Taft-Hartley Act must always be dissolved after 80 days, so that under the holding below their legality could never come before an appellate court.

STATEMENT

The statement of the case in the Government's brief in opposition omits the following two cardinal points:

1. The temporary restraining order of the District Court directed the Union and its officers to "forthwith instruct" its members to return to work, despite the Union's contention that it had not caused the strike. In upholding this order, the Court of Appeals did not find that the Union was responsible for the strike. It held that the District Court could order the Union to break the strike whether or not the Union caused it.

Thus, after stating that the Union contended that neither it nor its President caused the strike, the Court declared (R. 552):

> Appellants were not convicted for causing the walk-out. They were convicted because they deliberately failed to comply with the court's order of April 3rd. * * * The Union and Lewis ignored the order until the basic dispute was settled. The evidence supports their claim that they endeavored to settle the basic dispute, but it also shows

conclusively that pending the settlement of that dispute they made no attempt to restore normal production.

Again (R. 553):

> Appellants urge that the Union cannot be held liable for the acts of the miners in stopping work. * * * But, * * * we repeat that the Union was not convicted for causing the walk-out. It was convicted because it did not exercise, or attempt to exercise, whatever powers it had to cause its members to resume work temporarily pursuant to the court's order. Quite apart from what the miners did, the Union made no attempt to direct, instruct or persuade them to return to work, and thereby it disobeyed the court's order.

2. Petitioners contend, and contended below, that the District Court was without jurisdiction over the subject matter, for the reason that Title II of the Taft-Hartley Act, under which the Court acted, confers non-judicial powers on federal district courts, in violation of Article III of the Constitution. The Court of Appeals did not refer to this argument, nor does the Government in its Brief in Opposition.

Both of these points are highly pertinent to petitioners' contentions that the restraining order amounted to naked usurpation, was void and a nullity, and might therefore be disregarded with impunity.

REASONS FOR GRANTING THE WRIT

I.

The Court of Appeals held that every question necessary to the decision of this case had been disposed of by this Court in *United States* v. *United Mine Workers*, 330 U. S. 258. We submit, however, that the Court of Appeals has misconstrued the opinion of this Court in the *Mine Workers* case. In that case this Court held that an order entered by a court which has jurisdiction over the subject matter and which does not amount to usurpation of authority must be obeyed until set aside, on pain of contempt. But that case did not involve whether a union must comply with an order directing it to stop a strike it did not cause, nor the status of an order asserted to be void because in violation of Article III of the

Constitution. These are important issues which are presented in this case and which merit review by this Court.

1. Petitioners contended and the Court of Appeals conceded, at least for purposes of decision, that petitioners did not cause the strike. The Court of Appeals held, nevertheless, that the Union must comply with the order to stop the strike.

In the *Mine Workers* case this Court recognized that an order amounting to usurpation of authority may be ignored. To hold otherwise would mean that courts could arrogate authority to themselves as they pleased, and would have to be obeyed until reversed by a higher court. Application of such a doctrine to labor disputes would be disastrous to unions. To stop a strike temporarily is to break it forever. And, under the holding below, any union could be ordered to stop a strike, even if it did not call it.

No provision of the Taft-Hartley Act, no principle of equity jurisprudence, even so much as lends color to the District Court's arrogation of such power. Petitioners' claim that the order was a nullity presents a substantial and important question which has not been but should be decided by this Court.

2. Petitioners contended below that the functions conferred upon the courts by the so-called national emergency strike provisions of the Taft-Hartley Act are non-judicial in nature, and that those provisions, therefore, violate Article III of the Constitution. It has been settled almost since the inception of this government that there are at least two limitations upon the duties and powers which can be conferred upon federal courts created under Article III. In the first place, the function must be judicial in nature, not executive or legislative. In the second place, even judicial functions can be exercised by the federal courts only in connection with "cases or controversies" which are entrusted to the judiciary for final adjudication. See *Hayburn's case*, 2 Dall. 409, 13 How. 52; *United States* v. *Ferreira*, 13 How. 40; *Interstate Commerce Commission* v. *Brimson*, 154 U. S. 447; *Gordon* v. *United States*, 117 U. S. 697; *In re Sanborn*, 148 U. S. 222; *Federal Radio Commission* v. *General Electric Company*, 281 U. S.

464; *Postum Cereal Company* v. *California Fig Nut Company*, 272 U. S. 693; and *Keller* v. *Potomac Electric Power Company*, 261 U. S. 428.

Petitioners contend that both of these restrictions upon the powers which may be conferred upon federal courts created under Article III are violated by Sections 206-210 of the Taft-Hartley Act. Under these provisions, the only function of the federal courts is to issue 80-day injunctions against so-called national emergency strikes. The particular strike enjoined may, up until that point, have been legal, or it may have been illegal. That, however, is not a question which comes before the court, or upon which the issuance of an injunction depends. No legal issue—no justiciable controversy—of any sort is involved in a proceeding under Sections 206-210. The only function conferred upon a court by those sections is to issue an injunction, and then to dissolve it after eighty days, whether or not the strike has been settled.

The court is thus directed by the Act to issue an injunction which has no relation to any case or controversy which is or will be before it or any other court. The injunction is not in aid of any jurisdiction which may ultimately be exercised by any court.[1] It is not in aid of the jurisdiction of any admin-

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[1] That is the distinction between this case and *Douds* v. *Retail Stores Union*, 170 F. (2d) 695 (C.C.A. 2, 1948), which upheld the constitutionality of Section 10(1) of the Taft-Hartley Act. That section provides that whenever it is charged that any person has engaged in an unfair labor practice of a certain type, the Labor Board shall after preliminary investigation petition any district court for appropriate injunctive relief "pending the final adjudication of the Board with respect to such matter." Whether or not such an injunction is issued, the unfair labor practice case is thereafter handled like any other unfair labor practice case by the Labor Board, and the Board's decision is reviewable, as in other cases, by the appropriate court of appeals.

The difference between Section 10(1) and the statutory provisions here involved is at once apparent. Section 10(1) deals with cases or controversies which are potentially within the adjudicatory powers of the courts, and all that that section does is to direct the district courts to grant interim relief. That the cases will ultimately go before some other court for final disposition does not, of course, affect the existence of a case or controversy or deprive it of its justiciable nature. Neither does the fact that it will come before an administrative body for preliminary determination between the issuance of the injunction by the

istrative body. It is *sui generis*—a temporary decree by which the court, instead of the Congress, makes a strike illegal, not permanently but for 80 days. That is not a judicial power, and it cannot constitutionally be conferred upon courts created under Article III.[8]

If the contentions set out in the preceding paragraphs be well founded, the District Court was entirely without jurisdiction over the subject matter of this case, and its order was void. Petitioners could ignore it with impunity. Therefore it was incumbent upon the Court of Appeals to consider these contentions upon their merits. Its refusal to do so was evidently based upon a misconstruction of this Court's decision in the *Mine Workers* case, which should be corrected by this Court.

II.

The refusal of the court below to review the legality of the temporary restraining order and of the preliminary injunction

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district court and review of the Board's decision by the court of appeals. The judicial process utilized under Section 10(1) is not merely in aid of an administrative body—the Labor Board—but is in aid of the jurisdiction ultimately to be exercised by the courts of appeals. As such it is well within traditional concepts of the judicial power.

[8] As this Court stated in *Federal Radio Commission* v. *General Electric Company*, 281 U. S. 464, 468, "the courts of the District of Columbia are not created under the judiciary article of the Constitution but are legislative courts, and therefore * * * Congress may invest them with" non-judicial functions. Therefore (other constitutional questions aside), Congress no doubt could have constitutionally bestowed upon the courts of the District of Columbia the authority conferred by Sections 206-210, even though such power could not constitutionally be given to the other federal courts.

That, however, cannot save the constitutionality of the provisions in question, since it is too plain for argument that Congress would not have enacted the statute thus limited. It is familiar law that, when one part of a statute is held unconstitutional, whether the remainder of the Act will be left to stand alone, or will be held to fall entirely, depends on whether it appears that Congress would have enacted the remaining parts of the Act with the unconstitutional portion omitted. *Dorchy* v. *Kansas*, 264 U. S. 286, 290; *Railroad Retirement Board* v. *Alton R. Co.*, 295 U. S. 330, 362.

Here Congress sought to confer jurisdiction upon "any district court of the United States having jurisdiction of the parties" (Sec. 208(a)) and it provided for review by "the appropriate circuit court of appeals and by the Supreme Court" (Sec. 208(c)). It cannot reasonably be supposed that if Congress had anticipated that these powers could be upheld only as to one district court out of perhaps a hundred, and as to one court of appeals out of ten, with the provision for Supreme Court review falling entirely, it would have enacted the provisions at all.

presents an important question which should be decided by this Court.

The temporary restraining order issued by the District Court expired by its own terms, and the preliminary injunction which succeeded it was discharged by the District Court upon application of the Government. Accordingly, the court below dismissed the appeal in that case (No. 169 in this Court) as moot.

Under this holding, it would never be possible to secure the decision of this Court, or even of the Court of Appeals, upon the constitutionality of Title II of the Taft-Hartley Act, or upon the legality of an injunction issued under it. Section 210 of that Act provides that upon the completion of certain procedures under Section 209 of the Act, which may take a maximum of 80 days, the Attorney General "shall move the court to discharge the injunction, which motion shall be granted and the injunction discharged." Thus, these 80-day injunctions will always be discharged before enough time elapses to permit review by this Court of their legality or of the constitutionality of the underlying statute.

The holding below would render inoperative the provision of Section 208(c) of the Taft-Hartley Act that "The order or orders of the court shall be subject to review by the appropriate circuit court of appeals and by the Supreme Court upon writ of certiorari * * *." In a situation such as the present it is necessary and proper, moreover, that technical considerations be disregarded, in order to afford judicial protection to vital constitutional rights.

This Court has evidently taken that view even in cases not involving constitutional issues, where the case could not reach this Court in time to avoid its having become technically moot. Thus, in *Scripps-Howard Radio* v. *Federal Communications Commission,* 316 U. S. 4, the question decided by this Court was whether the Court of Appeals had power to stay enforcement of an order of the Federal Communications Commission pending appeal. The Court of Appeals had not issued a stay, the order of the Commission had gone into effect, and during the 2½ years it took the case to reach this Court the question of a stay had, for that case, become wholly academic. This was pointed out by the Government in its brief, with the sug-

gestion that the case was moot. However, the opinion of the Court, by Mr. Justice Frankfurter, ignored entirely the question of mootness, undoubtedly because the question in that case could, from its very nature, never reach this Court without having become technically moot.

The same considerations apply here. The question of the legality of an injunction could never be brought before this Court within 80 days. Nothing in the Taft-Hartley Act, however, prevents the Attorney General from securing one 80-day injunction after another. That underlines what should be evident enough anyway, that a court should not permit technical consideration of mootness to frustrate protection of legal and constitutional rights.

CONCLUSION

For these reasons, it is respectfully submitted that the petition for writs of certiorari should be granted.

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